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सं. 38] नई दिल्ली, सितम्बर 12—सितम्बर 18, 2004, शनिवार/भाद्र 21—भाद्र 27, 1926
No. 38] NEW DELHI, SEPTEMBER 12—SEPTEMBER 18, 2004, SATURDAY/BHADRA 21—BHADRA 27, 1926

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएँ
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

संसदीय कार्य मंत्रालय

(प्रशासन अनुभाग)

नई दिल्ली, 6 अगस्त, 2004

का.आ. 2303.—“सिगरेट और अन्य तम्बाकू उत्पाद (विज्ञापन का निषेध और व्यापार तथा वाणिज्य, उत्पादन, आपूर्ति तथा वितरण का विनियमन) अधिनियम, 2003” के खण्ड 25 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केंद्रीय सरकार में संसदीय कार्य मंत्रालय एतद्वारा निम्नलिखित तालिका के कालम 3 में निर्दिष्ट अधिकारी को प्राधिकृत करता है जो कि उपरोक्त अधिनियम के खण्ड 4 के अन्तर्गत कार्य करने के लिए सक्षम होंगे :—

क्रम संख्या	कार्यालय	प्राधिकृत व्यक्ति
1	2	3
1.	संसदीय कार्य मंत्रालय जाम नगर हाऊस, नई दिल्ली	अवर सचिव (कार्या.)

यह अधिसूचना दिनांक 5 अगस्त, 2004 से प्रभावी होगी।

[फा. सं. 15(7)/2004-प्रशासन]

पी. गोपालाकृष्णन, संयुक्त सचिव

MINISTRY OF PARLIAMENTARY AFFAIRS

(Administration Section)

New Delhi, the 6th August, 2004

S.O. 2303.—In exercise of the powers conferred by Section 25 of “The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003” the Central Government in the Ministry of Parliamentary Affairs hereby authorizes the officers indicated in Column 3 of the Table given below who shall be competent to act under Section 4 of the said Act :—

S. No.	Office	Authorised Person
1	2	3
1.	Ministry of Parliamentary Affairs Jam Nagar House, New Delhi	Under Secretary (Imp.)

This notification shall come into effect from 5th August, 2004.

[F. No. 15(7)/2004-Admn.]

P. GOPALAKRISHNAN, Jt. Secy.

वित्त मंत्रालय

(राजस्व विभाग)

(केन्द्रीय प्रत्यक्ष कर बोर्ड)

नई दिल्ली, 25 अगस्त, 2004

(आयकर)

का.आ. 2304.—आयकर अधिनियम, 1961 (1961 का 43) की धारा 10 के खंड (23) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा "द बिलियर्ड्स एण्ड स्नूकर्स फेडरेशन आफ इंडिया, कोलकाता" को वर्ष 1999-2000 से 2001-2002 तक के लिए निम्नलिखित शर्तों के अधीन रहते हुए उक्त उप खंड के प्रयोजनार्थ अनुमोदित करती है, अर्थात् :—

- (i) कर-निर्धारिती अपनी आय का इस्तेमाल अथवा अपनी आय का इस्तेमाल करने के लिए उसका संचयन पूर्णतया तथा अनन्यतया उन उद्देश्यों के लिए करेगा जिनके लिए इसकी स्थापना की गई है ;
- (ii) कर-निर्धारिती उपर्युक्त कर निर्धारण वर्षों से संगत पूर्ववर्ती वर्षों की किसी भी अवधि के दौरान धारा 11 की उपधारा (5) में विनिर्दिष्ट किसी एक अथवा एक से अधिक ढंग अथवा तरीकों से भिन्न तरीकों से उसकी निधि (जेवर-जवाहिरात, फर्नीचर आदि किसी अन्य वस्तु आदि के रूप में प्राप्त तथा अनुरक्षित स्वैच्छिक अंशदान से भिन्न) का निवेश नहीं करेगा अथवा उसे जमा नहीं करवा सकेगा;
- (iii) यह अधिसूचना किसी ऐसी आय के संबंध में लागू नहीं होगी, जो कि कारोबार से प्राप्त लाभ तथा अभिलाभ हो जब तक कि ऐसा कारोबार उक्त कर निर्धारिती के उद्देश्यों की प्राप्ति के लिए प्रासंगिक नहीं हो तथा ऐसे कारोबार के संबंध में अलग से लेखा पुस्तिकाएं नहीं रखी जाती हों;
- (iv) कर निर्धारिती आयकर अधिनियम, 1961 के प्रावधानों के अनुसार अपनी आय विवरणी नियमित रूप से आयकर प्राधिकारी के समक्ष फाइल करेगा;
- (v) विघटन की स्थिति में इसकी अतिरिक्त राशियां और परिसम्पतियां समान उद्देश्यों वाले धर्मार्थ संगठन को दे दी जाएंगी।

[अधिसूचना सं. 235/2004/फा. सं. 196/4/2004-आई टी ए-1]

देवी शरण सिंह, अवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF DIRECT TAXES)

New Delhi, the 25th August, 2004

(INCOME TAX)

S. O. 2304.—In exercise of powers conferred by the clause (23) of Section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the

"The Billiard and Snookers Federation of India, Kolkata" for the purpose of the said sub-clause for the assessment years 1999-2000 to 2001-2002 subject to the following conditions, namely:—

- (i) the assessee will apply its income, or accumulate for application, wholly and exclusively to the objects for which it is established;
- (ii) the assessee will not invest or deposit its fund (other than voluntary contributions received and maintained in the form of jewellery, furniture etc.) for any period during the previous years relevant to the assessment years mentioned above otherwise than in any one or more of the forms or modes specified in sub-section (5) of Section 11;
- (iii) this notification will not apply in relation to any income being profits and gains of business, unless the business is incidental to the attainment of the objectives of the assessee and separate books of account are maintained in respect of such business;
- (iv) the assessee will regularly file its return of income before the Income-tax authority in accordance with the provisions of the Income-tax Act, 1961;
- (v) that in the event of dissolution, its surplus and the assets will be given to a charitable organisation with similar objectives.

[Notification No. 235/2004/F.No. 196/4/2004-ITA-I]

DEVI SHARAN SINGH, Under Secy.

नई दिल्ली, 25 अगस्त, 2004

(आयकर)

का.आ. 2305.—आयकर अधिनियम, 1961 (1961 का 43) की धारा 10 के खंड (23) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा "महाराष्ट्र स्टेट बास्केटबाल एसोसिएशन, मुम्बई" को वर्ष 2000-2001 से 2002-2003 तक के लिए निम्नलिखित शर्तों के अधीन रहते हुए उक्त उप खंड के प्रयोजनार्थ अनुमोदित करती है, अर्थात् :—

- (i) कर-निर्धारिती अपनी आय का इस्तेमाल अथवा अपनी आय का इस्तेमाल करने के लिए उसका संचयन पूर्णतया तथा अनन्यतया उन उद्देश्यों के लिए करेगा जिनके लिए इसकी स्थापना की गई है;
- (ii) कर-निर्धारिती उपर्युक्त कर निर्धारण वर्षों से संगत पूर्ववर्ती वर्षों की किसी भी अवधि के दौरान धारा 11 की उप-धारा (5) में विनिर्दिष्ट किसी एक अथवा एक से अधिक ढंग अथवा तरीकों से भिन्न तरीकों से उसकी निधि (जेवर-जवाहिरात, फर्नीचर आदि किसी अन्य वस्तु आदि के रूप में

प्राप्त तथा अनुरक्षित स्वीच्छिक अंशदान से भिन्न) का निवेश नहीं करेगा अथवा उसे जमा नहीं करवा सकेगा;

- (iii) यह अधिसूचना किसी ऐसी आय के संबंध में लागू नहीं होगी, जो कि कारोबार से प्राप्त लाभ तथा अभिलाभ हो जब तक कि ऐसा कारोबार उक्त कर निर्धारिती के उद्देश्यों की प्राप्ति के लिए प्रासंगिक नहीं हो तथा ऐसे कारोबार के संबंध में अलग से लेखा पुस्तिकाएं नहीं रखी जाती हों;
- (iv) कर-निर्धारिती आयकर अधिनियम, 1961 के प्रावधानों के अनुसार अपनी आय विवरणी नियमित रूप से आयकर प्राधिकारी के समक्ष फाइल करेगा;
- (v) विघटन की स्थिति में इसकी अतिरिक्त राशियां और परिसम्पत्तियां समान उद्देश्यों वाले धर्मार्थ संगठन को दे दी जाएंगी।

[अधिसूचना सं. 234/2004/फा. सं. 196/8/2004-आई टी ए-1]

देवी शरण सिंह, अवर सचिव

New Delhi, the 25th August, 2004

(INCOME TAX)

S. O. 2305.—In exercise of powers conferred by the clause (23) of Section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the "Maharashtra State Basketball Association, Mumbai" for the purpose of the said sub-clause for the assessment years 2000-2001 to 2002-2003 subject to the following conditions, namely:—

- (i) the assessee will apply its income, or accumulate for application, wholly and exclusively to the objects for which it is established;
- (ii) the assessee will not invest or deposit its fund (other than voluntary contributions received and maintained in the form of jewellery, furniture etc.) for any period during the previous years relevant to the assessment years mentioned above other wise than in any one or more of the forms or modes specified in Sub-section (5) of Section 11;
- (iii) this notification will not apply in relation to any income being profits and gains of business, unless the business is incidental to the attainment of the objectives of the assessee and separate books of accounts are maintained in respect of such business;
- (iv) the assessee will regularly file its return of income before the Income-tax authority in accordance with the provisions of the Income-tax Act, 1961;
- (v) that in the event of dissolution, its surplus and the assets will be given to a charitable organisation with similar objectives.

[Notification No. 234/2004/F.No. 196/8/2004-ITA-I]

DEVI SHARAN SINGH, Under Secy.

कार्यालय : मुख्य आयकर आयुक्त,

जयपुर, 27 अगस्त, 2004

सं. 1/27-8-2004

का. आ. 2306.—आयकर अधिनियम, 1961 (1961 का 43) की धारा 10 के खण्ड (23-सी) की उप-धारा (VI) आयकर नियम, 1962 के सहपठित नियम 2 सीए द्वारा प्रदत्त अधिकारों का प्रयोग करते हुए मुख्य आयकर आयुक्त, जयपुर एतद्वारा "बिड़ला इंस्टीट्यूट ऑफ टेक्नोलोजी एण्ड साइंस, पिलानी (राजस्थान)" को निर्धारण वर्ष 2005-2006 से 2007-2008 तक के लिए उक्त धारा के निमित्त अनुमोदित करते हैं।

यह अनुमोदन सोसायटी द्वारा आयकर अधिनियम, 1961 की धारा 10 के खण्ड (23सी) के उप-खण्ड (VI), के आयकर नियम, 1962 के सह पठित नियम 2 सीए के उपबन्धों की सहमति एवं अनुपालन करने पर निर्भर होगा।

[क्र. मु आ आ/आ अ (मु.)/आई ए-2/10(23सी)(VI)/03-04]

एम. एन. वर्मा, मुख्य आयकर आयुक्त

Office of the Chief Commissioner of Income-tax

Jaipur, the 27th August, 2004

No. 1/27-8-2004

S. O. 230-6.—In exercise of the powers conferred by the Sub-section (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961), read with rule 2CA of the Income-tax Rules, 1962, the Chief Commissioner of Income-tax, Jaipur hereby approves "Birla Institute of Technology and Science, Pilani (Rajasthan)" for the purpose of the said section for the assessment years 2005-2006 to 2007-2008 (F. Yrs. 2004-2005 to 2006-2007).

Provided that the society conforms to and complies with the provisions of sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 read with rule 2CA of the Income-tax Rules, 1962.

[No. CC/ITO(Hq.)/JPR/10(23C)(VI)03-04]

M. N. VERMA, Chief Commissioner of Income-tax

आदेश

नई दिल्ली, 3 सितम्बर, 2004

स्टाम्प

का. आ. 2307.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (i) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा इंडियन ओवरसीज बैंक, चेन्नई को मात्र एक करोड़ रुपए का समेकित स्टाम्प शुल्क अदा करने की अनुमति देती है, जो उक्त बैंक द्वारा जारी किए जाने वाले मात्र दो सौ

करोड़ रुपए के समग्र मूल्य के प्रामिसरी नोटों के स्वरूप के असुरक्षित विमोच्य गैर-परिवर्तनीय गौण बंधपत्र शृंखला-V पर स्टाम्प शुल्क के कारण प्रभाय है।

[सं. 17/2004-स्टाम्प/एफ. सं. 33/27/2004-बि.क.]

आर. जी. छाबड़ा, अवर सचिव

ORDER

New Delhi, the 3rd September, 2004

STAMPS

S.O. 2307.—In exercise of the powers conferred by clause (b) of Sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits Indian Overseas Bank, Chennai to pay consolidated stamp duty of rupees one crore only chargeable on account of the stamp duty on Unsecured Redeemable Non-Convertible Subordinated Bonds—Series V in the nature of promissory notes aggregating to rupees two hundred crore only, to be issued by the said Bank.

[No. 17/2004-STAMP/F. No. 33/27/2004-ST]

R. G. CHHABRA, Under Secy.

आदेश

नई दिल्ली, 6 सितम्बर, 2004

स्टाम्प

का. आ. 2308.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (i) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा धनलक्ष्मी बैंक लि., त्रिसूर को मात्र तेरह लाख, बारह हजार, पांच सौ रुपए का समेकित स्टाम्प शुल्क अदा करने की अनुमति देती है, जो उक्त बैंक द्वारा जारी किए जाने वाले मात्र पचास करोड़ रुपए के समग्र मूल्य के ऋणपत्रों के स्वरूप के असुरक्षित विमोच्य गैर-परिवर्तनीय गौण बंधपत्रों (डी बी एल बंधपत्र-शृंखला-IV) पर स्टाम्प शुल्क के कारण प्रभाय है।

[सं. 18/2004-स्टाम्प/एफ. सं. 33/39/2004-बि.क.]

आर. जी. छाबड़ा, अवर सचिव

ORDER

New Delhi, the 6th September, 2004

STAMPS

S.O. 2308.—In exercise of the powers conferred by clause (b) of Sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits The Dhanaalakshmi Bank Limited, Thrissur to pay consolidated stamp duty of rupees thirteen lakh twelve thousand five hundred only chargeable on account of the stamp duty on Unsecured Redeemable Non-Convertible Subordinated Bonds (DBL Bonds—Series IV) in the nature

of Debentures aggregating to rupees thirty five crore only, to be issued by the said Bank.

[No. 18/2004-STAMP-F. No. 33/39/2004-ST]

R. G. CHHABRA, Under Secy.

आदेश

नई दिल्ली, 9 सितम्बर, 2004

स्टाम्प

का. आ. 2309.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (i) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा आवास और शहरी विकास निगम लि., नई दिल्ली को मात्र इकहतर लाख, पचास हजार रुपए का समेकित स्टाम्प शुल्क अदा करने की अनुमति देती है, जो उक्त निगम द्वारा जारी किए जाने वाले मात्र पांच सौ पचहतर करोड़ रुपए के समग्र मूल्य के 1 से 500 तक की विशिष्ट संख्या वाले हुडको बंधपत्र शृंखला एच. बी.-XXIV और 1 से 5250 तक की विशिष्ट संख्या वाले हुडको बंधपत्र शृंखला एच. बी.-XXXV के रूप में वर्णित बंधपत्रों पर स्टाम्प शुल्क के कारण प्रभाय है।

[सं. 19/2004-स्टाम्प/एफ. सं. 33/40/2004-बि.क.]

आर. जी. छाबड़ा, अवर सचिव

ORDER

New Delhi, the 9th September, 2004

STAMPS

S.O. 2309.—In exercise of the powers conferred by clause (b) of Sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits Housing & Urban Development Corporation Limited, New Delhi to pay consolidated stamp duty of rupees seventy one lakh fifty thousand only on account of the stamp duty on bonds described as HUDCO Bonds Series HB-XXXIV bearing distinctive numbers from 1 to 500 and HUDCO Bonds Series HB-XXXV bearing distinctive numbers from 1 to 5250 aggregating to rupees five hundred seventy five crore only, to be issued by the said Corporation.

[No. 19/2004-STAMP/F. No. 33/40/2004-ST]

R. G. CHHABRA, Under Secy.

मानव संसाधन विकास मंत्रालय

(माध्यमिक और उच्चतर शिक्षा विभाग)

नई दिल्ली, 31 अगस्त, 2004

का. आ. 2310.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, मानव संसाधन विकास मंत्रालय (माध्यमिक और उच्चतर शिक्षा विभाग) के अंतर्गत निम्नलिखित 80 जवाहर नवोदय विद्यालयों की, ऐसी संस्थाओं के रूप में, जिनमें 80% से

अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :—

1. जवाहर नवोदय विद्यालय, आदिलाबाद, आन्ध्र प्रदेश
2. जवाहर नवोदय विद्यालय, गुंटूर, आन्ध्र प्रदेश
3. जवाहर नवोदय विद्यालय, करीम नगर, आन्ध्र प्रदेश
4. जवाहर नवोदय विद्यालय, कछार, असम
5. जवाहर नवोदय विद्यालय, गोलपाडा, असम
6. जवाहर नवोदय विद्यालय, शिवसागर, असम
7. जवाहर नवोदय विद्यालय, तिनसुखिया, असम
8. जवाहर नवोदय विद्यालय, धेमाजी, असम
9. जवाहर नवोदय विद्यालय, अररिया, बिहार
10. जवाहर नवोदय विद्यालय, कैमूर, बिहार
11. जवाहर नवोदय विद्यालय, भागलपुर, बिहार
12. जवाहर नवोदय विद्यालय, मधुबनी, बिहार
13. जवाहर नवोदय विद्यालय, जमुई, बिहार
14. जवाहर नवोदय विद्यालय, मोतीहारी, बिहार
15. जवाहर नवोदय विद्यालय, पटना, बिहार
16. जवाहर नवोदय विद्यालय, सुपौल, बिहार
17. जवाहर नवोदय विद्यालय, राजनंदगांव, छत्तीसगढ़
18. जवाहर नवोदय विद्यालय, सिली, दादरा एवं नगर हवेली
19. जवाहर नवोदय विद्यालय, जामनगर, गुजरात
20. जवाहर नवोदय विद्यालय, खेड़ा, गुजरात
21. जवाहर नवोदय विद्यालय, कच्छ, गुजरात
22. जवाहर नवोदय विद्यालय, बड़ौदा, गुजरात
23. जवाहर नवोदय विद्यालय, बानसकंठा, गुजरात
24. जवाहर नवोदय विद्यालय, सोनीपत, हरियाणा
25. जवाहर नवोदय विद्यालय, किन्नौर, हिमाचल प्रदेश
26. जवाहर नवोदय विद्यालय, सिरमौर, हिमाचल प्रदेश
27. जवाहर नवोदय विद्यालय, सोलन, हिमाचल प्रदेश
28. जवाहर नवोदय विद्यालय, बोकारो, झारखंड
29. जवाहर नवोदय विद्यालय, चतरा, झारखंड
30. जवाहर नवोदय विद्यालय, लातेहार, झारखंड
31. जवाहर नवोदय विद्यालय, बंगलौर (शहरी), कर्नाटक
32. जवाहर नवोदय विद्यालय, बंगलौर (ग्रामीण), कर्नाटक
33. जवाहर नवोदय विद्यालय, बीदर, कर्नाटक
34. जवाहर नवोदय विद्यालय, मांड्या, कर्नाटक
35. जवाहर नवोदय विद्यालय, चामराजनगर, कर्नाटक
36. जवाहर नवोदय विद्यालय, अलेप्पी, केरल
37. जवाहर नवोदय विद्यालय, अर्णाकुलम, केरल
38. जवाहर नवोदय विद्यालय, कासरगौड, केरल
39. जवाहर नवोदय विद्यालय, बेतुल, मध्य प्रदेश
40. जवाहर नवोदय विद्यालय, छतरपुर, मध्य प्रदेश
41. जवाहर नवोदय विद्यालय, छिन्दवाडा, मध्य प्रदेश
42. जवाहर नवोदय विद्यालय, दमोह, मध्य प्रदेश
43. जवाहर नवोदय विद्यालय, दतिया, मध्य प्रदेश
44. जवाहर नवोदय विद्यालय, गुना, मध्य प्रदेश
45. जवाहर नवोदय विद्यालय, होशंगाबाद, मध्य प्रदेश
46. जवाहर नवोदय विद्यालय, खंडवा, मध्य प्रदेश
47. जवाहर नवोदय विद्यालय, मांडला, मध्य प्रदेश
48. जवाहर नवोदय विद्यालय, मुरैना, मध्य प्रदेश
49. जवाहर नवोदय विद्यालय, पन्ना, मध्य प्रदेश
50. जवाहर नवोदय विद्यालय, ठज्जेन, मध्य प्रदेश
51. जवाहर नवोदय विद्यालय, विदिशा, मध्य प्रदेश
52. जवाहर नवोदय विद्यालय, खरगोन, मध्य प्रदेश
53. जवाहर नवोदय विद्यालय, औरंगाबाद, महाराष्ट्र
54. जवाहर नवोदय विद्यालय, नंदुरबार, महाराष्ट्र
55. जवाहर नवोदय विद्यालय, हिंगोली, महाराष्ट्र
56. जवाहर नवोदय विद्यालय, रत्नागिरी, महाराष्ट्र
57. जवाहर नवोदय विद्यालय, पूर्वी गारो हिल्स, मेघालय
58. जवाहर नवोदय विद्यालय, त्वेनसांग, नागालैंड
59. जवाहर नवोदय विद्यालय, कटक, उड़ीसा

60. जवाहर नवोदय विद्यालय, गंजम, उड़ीसा
61. जवाहर नवोदय विद्यालय, नौपाड़ा, उड़ीसा
62. जवाहर नवोदय विद्यालय, अमृतसर, पंजाब
63. जवाहर नवोदय विद्यालय, भटिंडा, पंजाब
64. जवाहर नवोदय विद्यालय, नवांशहर, पंजाब
65. जवाहर नवोदय विद्यालय, बाराण, राजस्थान
66. जवाहर नवोदय विद्यालय, बाडमेर, राजस्थान
67. जवाहर नवोदय विद्यालय, भरतपुर, राजस्थान
68. जवाहर नवोदय विद्यालय, बीकानेर, राजस्थान
69. जवाहर नवोदय विद्यालय, चित्तौड़गढ़, राजस्थान
70. जवाहर नवोदय विद्यालय, धौलपुर, राजस्थान
71. जवाहर नवोदय विद्यालय, जौधपुर, राजस्थान
72. जवाहर नवोदय विद्यालय, कोटा, राजस्थान
73. जवाहर नवोदय विद्यालय, राजसमंद, राजस्थान
74. जवाहर नवोदय विद्यालय, टोंक, राजस्थान
75. जवाहर नवोदय विद्यालय, उत्तर सिक्किम, सिक्किम
76. जवाहर नवोदय विद्यालय, बुलन्दशहर, उत्तर प्रदेश
77. जवाहर नवोदय विद्यालय, गाजीपुर, उत्तर प्रदेश
78. जवाहर नवोदय विद्यालय, मैनपुरी, उत्तर प्रदेश
79. जवाहर नवोदय विद्यालय, कानपुर देहात, उत्तर प्रदेश
80. जवाहर नवोदय विद्यालय, अमरोहा, उत्तर प्रदेश

[सं. 11011-4/2003-रा.भा.-ए.]

धनेश्वर प्रसाद बन्दूनी, निदेशक (रा. भा.)

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of Sec. & Higher Education)

New Delhi, the 31st August, 2004

S.O. 2310.—In pursuance of sub rule (4) of rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the following 80 Jawahar Navodaya Vidyalayas under the Ministry of Human Resource Development (Deptt. of Sec. & Higher Education) whose more than 80% members of the staff have acquired working knowledge of Hindi :—

1. Jawahar Navodaya Vidyalaya, Adilabad, Andhra Pradesh.
2. Jawahar Navodaya Vidyalaya, Guntur, Andhra Pradesh.

3. Jawahar Navodaya Vidyalaya, Karimnagar, Andhra Pradesh.
4. Jawahar Navodaya Vidyalaya, Kachhar, Assam.
5. Jawahar Navodaya Vidyalaya, Golpada, Assam.
6. Jawahar Navodaya Vidyalaya, Shivsagar, Assam.
7. Jawahar Navodaya Vidyalaya, Tinsukhiya, Assam.
8. Jawahar Navodaya Vidyalaya, Dhemaji, Assam.
9. Jawahar Navodaya Vidyalaya, Arrariya, Bihar.
10. Jawahar Navodaya Vidyalaya, Kimur, Bihar.
11. Jawahar Navodaya Vidyalaya, Bhagalpur, Bihar.
12. Jawahar Navodaya Vidyalaya, Madhubani, Bihar.
13. Jawahar Navodaya Vidyalaya, Jamui, Bihar.
14. Jawahar Navodaya Vidyalaya, Motihari, Bihar.
15. Jawahar Navodaya Vidyalaya, Patna, Bihar.
16. Jawahar Navodaya Vidyalaya, Supaul, Bihar.
17. Jawahar Navodaya Vidyalaya, Rajnandgaon, Chhatisgarh.
18. Jawahar Navodaya Vidyalaya, Silee, Dadar and Nagar Haveli.
19. Jawahar Navodaya Vidyalaya, Jamnagar, Gujarat.
20. Jawahar Navodaya Vidyalaya, Kheda, Gujarat.
21. Jawahar Navodaya Vidyalaya, Kutch, Gujarat.
22. Jawahar Navodaya Vidyalaya, Vadodara, Gujarat.
23. Jawahar Navodaya Vidyalaya, Banaskantha, Gujarat.
24. Jawahar Navodaya Vidyalaya, Sonapat, Haryana.
25. Jawahar Navodaya Vidyalaya, Kinnaur, Himachal Pradesh.
26. Jawahar Navodaya Vidyalaya, Sirmor, Himachal Pradesh.
27. Jawahar Navodaya Vidyalaya, Solan, Himachal Pradesh.
28. Jawahar Navodaya Vidyalaya, Bokaro, Jharkhand.
29. Jawahar Navodaya Vidyalaya, Chatra, Jharkhand.
30. Jawahar Navodaya Vidyalaya, Latehar, Jharkhand.
31. Jawahar Navodaya Vidyalaya, Bangalore (Urban), Karnataka.
32. Jawahar Navodaya Vidyalaya, Bangalore (Rural), Karnataka.

33. Jawahar Navodaya Vidyalaya, Bedar, Karnataka.
34. Jawahar Navodaya Vidyalaya, Mandya, Karnataka.
35. Jawahar Navodaya Vidyalaya, Chamrajnagar, Karnataka.
36. Jawahar Navodaya Vidyalaya, Alepaye, Kerala.
37. Jawahar Navodaya Vidyalaya, Ernakulam, Kerala.
38. Jawahar Navodaya Vidyalaya, Kasargaod, Kerala.
39. Jawahar Navodaya Vidyalaya, Betul, Madhya Pradesh.
40. Jawahar Navodaya Vidyalaya, Chhatarpur, Madhya Pradesh.
41. Jawahar Navodaya Vidyalaya, Chindwada, Madhya Pradesh.
42. Jawahar Navodaya Vidyalaya, Damoh, Madhya Pradesh.
43. Jawahar Navodaya Vidyalaya, Datia, Madhya Pradesh.
44. Jawahar Navodaya Vidyalaya, Guna, Madhya Pradesh.
45. Jawahar Navodaya Vidyalaya, Hoshangabad, Madhya Pradesh.
46. Jawahar Navodaya Vidyalaya, Khandwa, Madhya Pradesh.
47. Jawahar Navodaya Vidyalaya, Mundla, Madhya Pradesh.
48. Jawahar Navodaya Vidyalaya, Murena, Madhya Pradesh.
49. Jawahar Navodaya Vidyalaya, Panna, Madhya Pradesh.
50. Jawahar Navodaya Vidyalaya, Ujjain, Madhya Pradesh.
51. Jawahar Navodaya Vidyalaya, Vidisha, Madhya Pradesh.
52. Jawahar Navodaya Vidyalaya, Khargon, Madhya Pradesh.
53. Jawahar Navodaya Vidyalaya, Aurangabad, Maharashtra.
54. Jawahar Navodaya Vidyalaya, Nandudarbar, Maharashtra.
55. Jawahar Navodaya Vidyalaya, Hingoli, Maharashtra.
56. Jawahar Navodaya Vidyalaya, Ratnagiri, Maharashtra.
57. Jawahar Navodaya Vidyalaya, Purbi Garo Hills, Meghalaya.
58. Jawahar Navodaya Vidyalaya, Tawinsangh, Nagaland.
59. Jawahar Navodaya Vidyalaya, Cuttack, Orissa.
60. Jawahar Navodaya Vidyalaya, Gunjam, Orissa.
61. Jawahar Navodaya Vidyalaya, Naupada, Orissa.
62. Jawahar Navodaya Vidyalaya, Amritsar, Punjab.
63. Jawahar Navodaya Vidyalaya, Bathinda, Punjab.
64. Jawahar Navodaya Vidyalaya, Navasahar, Punjab.
65. Jawahar Navodaya Vidyalaya, Baran, Rajasthan.
66. Jawahar Navodaya Vidyalaya, Barmer, Rajasthan.
67. Jawahar Navodaya Vidyalaya, Bharatpur, Rajasthan.
68. Jawahar Navodaya Vidyalaya, Bikaner, Rajasthan.
69. Jawahar Navodaya Vidyalaya, Chitaurgarh, Rajasthan.
70. Jawahar Navodaya Vidyalaya, Dhaulpur, Rajasthan.
71. Jawahar Navodaya Vidyalaya, Jodhpur, Rajasthan.
72. Jawahar Navodaya Vidyalaya, Kota, Rajasthan.
73. Jawahar Navodaya Vidyalaya, Rajasamund, Rajasthan.
74. Jawahar Navodaya Vidyalaya, Tonk, Rajasthan.
75. Jawahar Navodaya Vidyalaya, North Sikkim, Sikkim.
76. Jawahar Navodaya Vidyalaya, Bulandsahar, Uttar Pradesh.
77. Jawahar Navodaya Vidyalaya, Gajipur, Uttar Pradesh.
78. Jawahar Navodaya Vidyalaya, Mainpuri, Uttar Pradesh.
79. Jawahar Navodaya Vidyalaya, Kanpur Rural, Uttar Pradesh.
80. Jawahar Navodaya Vidyalaya, Amroha, Uttar Pradesh.

[No. 11011-4/2003-O.L.U.]

D. P. BANDOONI, Director (O.L.)

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य विभाग)

नई दिल्ली, 2 सितम्बर, 2004

का. आ. 2311.—केन्द्र सरकार ने भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 3 की उपधारा (1) के खण्ड (ग) के अनुसरण में उड़ीसा के पंजीकृत चिकित्सा स्नातक निर्वाचन क्षेत्र में चुनाव करवाया है जहां से डॉ. प्रो. भागवती चरण दास, निदेशक, राज्य स्वास्थ्य और परिवार कल्याण संस्थान, नयापल्ली, भुवनेश्वर 10-2-2004 को इस अधिसूचना के जारी होने की तारीख से भारतीय आयुर्विज्ञान परिषद् के सदस्य के रूप में निर्वाचित हुए हैं।

अतः अब, उक्त अधिनियम की धारा 3 की उपधारा (1) के उपबंध के अनुसरण में केन्द्र सरकार एतद्वारा भारत सरकार के तत्कालीन स्वास्थ्य मंत्रालय की दिनांक 9 जनवरी, 1960 की अधिसूचना संख्या का.आ. 138 में निम्नलिखित और संशोधन करती है, अर्थात् :-

उक्त अधिसूचना में "धारा 3 की उपधारा (1) के खण्ड (ग) के अधीन निर्वाचित" शीर्षक के अंतर्गत क्रम संख्या 8 और उससे संबंधित प्रविष्टियों के स्थान पर निम्नलिखित क्रम संख्या और प्रविष्टियां प्रतिस्थापित की जाएंगी, अर्थात् :-

"8. प्रो. भागवती चरण दास,
निदेशक, राज्य स्वास्थ्य और परिवार कल्याण संस्थान,
उड़ीसा सरकार, नयापल्ली,
भुवनेश्वर"

[संख्या बी-11013/3/2004-एम.ई. (नीति-1)]

पी.जी. कलाधरण, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health)

New Delhi, the 2nd September, 2004

S.O. 2311.—Whereas the Central Government in pursuance of clause (c) of sub-section (1) of Section 3 of the Indian Medical Council Act, 1956 (102 of 1956) has conducted the election from the Registered Medical Graduate Constituency of Orissa where from Dr. Prof. Bhagabati Charan Das, Director, State Institute of Health & Family Welfare, Nayapalli, Bhubneshwar has been elected on 10-2-2004 to be a member of the Medical Council of India with effect from the date of issue of this notification.

Now, therefore, in pursuance of the provision of sub-section (1) of Section 3 of the said Act, the Central Government hereby makes the following further amendment in the Notification of the Government of India in the then

Ministry of Health Number S.O. 138, dated the 9th January, 1960, namely :—

In the said notification, under the heading, 'Elected under clause (c) of sub-section (1) of Section 3' for the serial No. 8 and the entries relating thereto the following serial number and entries shall be substituted, namely:—

"8. Prof. Bhagabati Charan Das,
Director, State Institute of
Health & Family Welfare, Govt. of Orissa,
Nayapalli, Bhubneshwar"

[No. V-11013/3/2004-ME(Policy-1)]

P. G. KALADHARAN, Under Secy.

नई दिल्ली, 2 सितम्बर, 2004

का. आ. 2312.—केन्द्र सरकार ने भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 3 की उपधारा (1) के खण्ड (क) के अनुसरण में तथा पश्चिम बंगाल सरकार के साथ परामर्श करके प्रो. इंद्रजीत रे को दिनांक 8 अगस्त, 2004 से पांच वर्ष की अवधि के लिए भारतीय आयुर्विज्ञान परिषद् के सदस्य के रूप में मनोनीत किया है।

अतः अब, उक्त अधिनियम की धारा 3 की उपधारा (1) के उपबंध के अनुसरण में केन्द्र सरकार एतद्वारा भारत सरकार के तत्कालीन स्वास्थ्य मंत्रालय की दिनांक 9 जनवरी, 1960 की अधिसूचना संख्या का.आ. 138 में निम्नलिखित और संशोधन करती है, अर्थात् :-

उक्त अधिसूचना में "धारा 3 की उपधारा (1) के खण्ड (क) के अधीन मनोनीत" शीर्षक के अंतर्गत क्रम संख्या 10 और उससे संबंधित प्रविष्टियों के स्थान पर निम्नलिखित क्रम संख्या और प्रविष्टियां प्रतिस्थापित की जाएंगी, अर्थात् :-

"10. प्रो. इंद्रजीत रे
पी/17, साउथ एंड गार्डन,
पी.ओ. गारिया,
कोलकाता-700 084

पश्चिमी

बंगाल सरकार"

[संख्या बी-11013/1/2004-एम.ई. (नीति-1)]

पी.जी. कलाधरण, अवर सचिव

New Delhi, the 2nd September, 2004

S.O. 2312.—Whereas the Central Government in pursuance of clause (a) of sub-section (1) of Section 3 of the Indian Medical Council Act, 1956 (102 of 1956) and in consultation with the Government of West Bengal have nominated Prof. Indrajit Ray to be a member of the Medical Council of India for a period of five years with effect from 8th August, 2004.

Now, therefore, in pursuance of the provision of sub-section (1) of Section 3 of the said Act, the Central Government hereby makes the following further amendment in the Notification of the Government of India in the then Ministry of Health Number S.O. 138, dated the 9th January, 1960, namely:—

In the said notification, under the heading, 'Nominated under clause (a) of sub-section (1) of Section 3' for serial No. 10 and the entries relating thereto the following serial number and entries shall be substituted, namely:—

"10. Prof. Indrajit Ray, Government of
P/17, South End West Bengal"
Garden, P.O. Garia,
Kolkata-700084

[No. V-11013/1/2004-ME(Policy-I)]

P. G. KALADHARAN, Under Secy.

नई दिल्ली, 2 सितम्बर, 2004

का. आ. 2313.—भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 3 की उपधारा (1) के खण्ड (ख) के अनुसरण में, प्रो. एस.सी. महापात्र, प्रिंसिपल, बी.एस.एस. मेडिकल कालेज, बुर्ला को सम्बलपुर विश्वविद्यालय की सीनेट द्वारा इस अधिसूचना के जारी होने की तारीख से भारतीय आयुर्विज्ञान परिषद् के एक सदस्य के रूप में निर्वाचित किया गया है।

अतः अब, उक्त अधिनियम की धारा 3 की उपधारा (1) के उपबंध के अनुसरण में केन्द्र सरकार एतद्वारा भारत सरकार के तत्कालीन स्वास्थ्य मंत्रालय की दिनांक 9 जनवरी, 1960 की अधिसूचना संख्या का.आ. 138 में निम्नलिखित संशोधन करती है, अर्थात्:—

उक्त अधिसूचना में "धारा 3 की उपधारा (1) के खण्ड (ख) के अधीन निर्वाचित" शीर्षक के अंतर्गत क्रम संख्या 40 और उससे संबंधित प्रविष्टियों के स्थान पर निम्नलिखित क्रम संख्या और प्रविष्टियां प्रतिस्थापित की जाएंगी, अर्थात्:—

"40. प्रो. एस.सी. महापात्र, सम्बलपुर यूनिवर्सिटी"
प्रिंसिपल,

बी.एस.एस. मेडिकल
कालेज, बुर्ला (उड़ीसा)

[संख्या वी-11013/2/2004-एम.ई. (नीति-1)]

पी.जी. कलाधरण, अवर सचिव

पाद टिप्पण:—मुख्य अधिसूचना दिनांक 9-1-1960 के का.आ. 138 के तहत भारत के राजपत्र में प्रकाशित हुई थी।

27/9/04-2

New Delhi, the 2nd September, 2004

S.O. 2313.—Whereas the Central Government in pursuance of clause (b) of sub-section (1) of Section 3 of the Indian Medical Council Act, 1956 (102 of 1956) Pro. S.C. Mohapatra, Principal, V.S.S. Medical College, Burla has been elected by the Senate of the Sambalpur University to be a member of the Medical Council of India with effect from the date of issue of this notification.

Now, therefore, in pursuance of the provision of sub-section (1) of Section 3 of the said Act, the Central Government hereby makes the following further amendment in the Notification of the Government of India in the then Ministry of Health Number S.O. 138, dated the 9th January, 1960, namely:—

In the said notification, under the heading, 'Elected under clause (b) of sub-section (1) of Section 3' for serial No. 40 and the entries relating thereto the following serial number and entries shall be substituted, namely:—

"40. Prof. S.C. Mohapatra, Sambalpur University"
Principal,
V.S.S. Medical College,
Burla (Orissa)

[No. V-11013/2/2004-ME(Policy-I)]

P. G. KALADHARAN, Under Secy.

Footnote:—The Principal notification was published in the Gazette of India vide S. O. 138 dated 9-1-1960.

नई दिल्ली, 2 सितम्बर, 2004

का. आ. 2314.—केन्द्र सरकार ने भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 3 की उपधारा (1) के खण्ड (क) के अनुसरण में तथा नागालैंड सरकार से परामर्श करके डा. एस. इम्कांग तुशी औ को इस अधिसूचना के जारी होने की तारीख से भारतीय आयुर्विज्ञान परिषद् के एक सदस्य के रूप में मनोनीत किया है।

अतः अब, उक्त अधिनियम की धारा 3 की उपधारा (1) के उपबंध के अनुसरण में केन्द्र सरकार एतद्वारा भारत सरकार के तत्कालीन स्वास्थ्य मंत्रालय की दिनांक 9 जनवरी, 1960 की अधिसूचना संख्या का.आ. 138 में निम्नलिखित और संशोधन करती है, अर्थात्:—

उक्त अधिसूचना में "धारा 3 की उपधारा (1) के खण्ड (क) के अधीन मनोनीत" शीर्षक के अंतर्गत क्रम संख्या 17 और उससे

संबंधित प्रविष्टियों के स्थान पर निम्नलिखित क्रम संख्या और प्रविष्टियां प्रतिस्थापित की जाएंगी, अर्थात् :—

“17. डा. एस. इम्कांग तुशी औ, नागालैण्ड सरकार”
सचिव,
भारतीय रेड क्रॉस सोसायटी,
नागालैण्ड शाखा, कोहिमा-797001

[संख्या वी-11013/1/2004-एम.ई. (नीति-I)]

पी.जी. कलाधरण, अवर सचिव

New Delhi, the 2nd September, 2004

S.O. 2314.—Whereas the Central Government in pursuance of clause (a) of sub-section (1) of Section 3 of the Indian Medical Council Act, 1956 (102 of 1956) and in consultation with the Government of Nagaland have nominated Dr. S. Imkong Tushi Ao to be a member of the Medical Council of India with effect from the date of issue of this notification.

Now, therefore, in pursuance of the provision of sub-section (1) of Section 3 of the said Act, the Central Government hereby makes the following further amendment in the Notification of the Government of India in the then Ministry of Health Number S.O. 138, dated the 9th January, 1960, namely:—

In the said Notification, under the heading, ‘nominated under clause (a) of sub-section (1) of Section 3, for serial No. 17 and the entries relating thereto the following serial number and entries shall be substituted, namely:—

“17. Dr. S. Imkong Tushi Ao, Govt. of Nagaland”
Secretary,
Indian Red Cross Society,
Nagaland Branch,
Kohima-797001

[No. V-11013/1/2004-ME(Policy-I)]

P. G. KALADHARAN, Under Secy.

नई दिल्ली, 2 सितम्बर, 2004

का. आ. 2315.—केन्द्र सरकार ने भारतीय आयुर्विज्ञान परिषद अधिनियम, 1956 (1956 का 102) की धारा 3 की उपधारा (1) के खण्ड (क) के अनुसरण में तथा उड़ीसा सरकार के साथ परामर्श करके डा. डी.के.रे. एस.सी.बी. मेडिकल कालेज, कटक को 10 अगस्त, 2004 से पांच वर्षों की अवधि के लिए भारतीय आयुर्विज्ञान परिषद के एक सदस्य के रूप में मनोनीत किया है।

अतः अब, उक्त अधिनियम की धारा 3 की उपधारा (1) के उपबंध के अनुसरण में केन्द्र सरकार एतद्वारा भारत के तत्कालीन

स्वास्थ्य मंत्रालय की दिनांक 9 जनवरी, 1960 की अधिसूचना संख्या का.आ. 138 में निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में “धारा 3 की उपधारा (1) के खण्ड (क) के अधीन मनोनीत” शीर्षक के अंतर्गत क्रम संख्या 1 और उससे संबंधित प्रविष्टियों के स्थान पर निम्नलिखित क्रम संख्या और प्रविष्टियां प्रतिस्थापित की जाएंगी, अर्थात् :—

“1. डा. डी. के.रे., उड़ीसा सरकार”
शल्य चिकित्सा विभागाध्यक्ष,
एस.सी. बी. मेडिकल कालेज,
कटक (उड़ीसा)

[संख्या वी-11013/1/2004-एम.ई. (नीति-I)]

पी.जी. कलाधरण, अवर सचिव

New Delhi, the 2nd September, 2004

S.O. 2315.—Whereas the Central Government, in pursuance of clause (a) of sub-section (1) of Section 3 of the Indian Medical Council Act, 1956 (102 of 1956) and in consultation with the Government of Orissa have nominated Dr. D.K. Ray, S.C.B. Medical College, Cuttack to be a member of the Medical Council of India for a period of five years with effect from 10th August, 2004.

Now, therefore, in pursuance of the provision of sub-section (1) of Section 3 of the said Act, the Central Government hereby makes the following further amendment in the Notification of the Government of India in the then Ministry of Health Number S.O. 138, dated the 9th January, 1960, namely:—

In the said Notification, under the heading, ‘Nominated under clause (a) of sub-section (1) of Section 3’ for Serial No. 1 and the entries relating thereto the following serial number and entries shall be substituted, namely:—

“1. Dr. D.K. Ray, Govt. of Orissa”
H.O.D. Surgery,
S.C.B. Medical College,
Cuttack (Orissa)

[No. V-11013/1/2004-ME (Policy-I)]

P. G. KALADHARAN, Under Secy.

नई दिल्ली, 8 सितम्बर, 2004

का. आ. 2316.—केन्द्र सरकार भारतीय आयुर्विज्ञान परिषद अधिनियम, 1956 (1956 का 102) के खण्ड 11 के उप खण्ड (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारतीय आयुर्विज्ञान परिषद के

साथ परामर्श करने के पश्चात्, उक्त अधिनियम की प्रथम अनुसूची में एतद्वारा निम्नलिखित आगे और संशोधन करती है, अर्थात्:—

उक्त अनुसूची में—

(क) अंतिम प्रविष्टि और 'पंजीकरण के लिए संक्षेपण' [इसके आगे कालम (3) के रूप में उल्लिखित] शीर्षक के अंतर्गत तत्संबंधी प्रविष्टि के बाद 'मान्यताप्राप्त चिकित्सा अर्हता' [इससे आगे कालम (2) के रूप में उल्लिखित] शीर्षक के अंतर्गत "बनारस हिन्दू विश्वविद्यालय" के सामने निम्नलिखित को सम्मिलित किया जाएगा, अर्थात् :—

(2)	(3)
"डाक्टर ऑफ मेडिसिन (जठरान्त्र रोग विज्ञान)	डी. एम. (जठरान्त्र रोगविज्ञान) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह 1978 में अथवा इसके पश्चात् प्रदान की गई हो)
मजिस्ट्रार चिरुर्गेई (तंत्रिका-सर्जरी)	एम. सी.एच. (तंत्रिका-सर्जरी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह 1978 में अथवा इसके पश्चात् प्रदान की गई हो)";

(ख) अंतिम प्रविष्टि के पश्चात् कालम (2) में "एच. एन. बी., गढ़वाल विश्वविद्यालय", और कालम (3) में तत्संबंधी प्रविष्टि के सामने निम्नलिखित को सम्मिलित किया जाएगा, अर्थात् :—

(2)	(3)
"संवेदनाहरण विज्ञान में डिप्लोमा बाल स्वास्थ्य में डिप्लोमा क्लीनिकल विकृति विज्ञान में डिप्लोमा स्त्रीरोग विज्ञान और प्रसूति विज्ञान में डिप्लोमा विकलांग विद्या में डिप्लोमा मेडिकल विकिरण विज्ञान डायग्नोसिस में डिप्लोमा	डी.ए. डी. सी. एच. डी. सी. पी. डी. जी. ओ. डी. आर्थो. डी. एम. आर. डी. (हिमालयन आयुर्विज्ञान संस्थान, देहरादून में प्रशिक्षित छात्रों के संबंध में ये मान्यताप्राप्त अर्हता होगी यदि ये जनवरी, 2004 में अथवा इसके पश्चात् प्रदान की गई हों)";

[सं. बी. 11015/15/2004-एमई(नीति-I)]

पी. जी. कलाधरण, अवर सचिव

New Delhi, the 8th September, 2004

S.O. 2316.—In exercise of the powers conferred by sub-section (2) of the Section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely :—

In the said Schedule —

(a) against "Banaras Hindu University", under the heading 'Recognised Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—

(2)	(3)
"Doctor of Medicine (Gastroenterology)	D. M. (Gastro.) (This shall be a recognised medical qualification when granted in or after September, 1978)
Magistrar Chirurgiae (Neuro-Surgery)	M. Ch. (Neuro-Surgery) (This shall be a recognised medical qualification when granted in or after September, 1978)";

(b) against "H.N.B. Garhwal University", in column (2), after the last entry and the entry relating thereto in column (3), the following shall be inserted, namely:—

(2)	(3)
"Diploma in Anaesthesiology	D.A.
Diploma in Child Health	D.C.H
Diploma in Clinical Pathology	D.C.P
Diploma in Gynaecology and Obstetrics	D. G. O.
Diploma in Orthopaedics	D. Ortho.
Diploma in Medical Radiology Diagnosis	D.M.R.D.
	(These shall be recognised qualifications when granted in or after January, 2004 in respect of students trained at Himalayan Institute of Medical Sciences, Dehradun)."

[No. V-11015/15/2004-ME(Policy-I)]

P. G. KALADHARAN, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 13 सितम्बर, 2004

का. आ. 2317.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का. आ. 1349 तारीख 8 जून, 2004, जो भारत के राजपत्र तारीख 12 जून, 2004 में प्रकाशित की गई थी, द्वारा उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में गुरु गोबिन्द सिंह रिफाइनरीज लिमिटेड (हिन्दुस्तान पेट्रोलियम कॉरपोरेशन लिमिटेड की समनुषंगी) द्वारा मुन्द्रा - भटिंडा अपरिष्कृत तेल पाइपलाइन के माध्यम से गुजरात राज्य में मुन्द्रा पत्तन स्थित अपरिष्कृत तेल संस्थापन से पंजाब राज्य में भटिंडा तक पेट्रोलियम उत्पादों के परिवहन के लिए पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा की थी ; और उक्त राजपत्र अधिसूचना की प्रतियाँ जनता को तारीख 27 जुलाई, 2004 को उपलब्ध करा दी गई थीं;

और सक्षम प्राधिकारी ने, उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है ;

और केन्द्रीय सरकार ने, उक्त रिपोर्ट पर विचार करने के पश्चात, और यह समाधान हो जाने पर कि उक्त भूमि पाइपलाइन बिछाने के लिए अपेक्षित है, उसमें उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है ;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट उक्त भूमि में पाइपलाइन बिछाने के लिए उपयोग के अधिकार का अर्जन किया जाता है;

और केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि उक्त भूमि में पाइपलाइन बिछाने के लिए उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने की बजाए, सभी विल्लंगमों से मुक्त, गुरु गोबिन्द सिंह रिफाइनरीज लिमिटेड (हिन्दुस्तान पेट्रोलियम कॉरपोरेशन लिमिटेड की समनुषंगी) में निहित होगा।

अनुसूची

तहसील : रानीवाड़ा	जिला : जालोर		राज्य : राजस्थान		
गाँव का नाम	खसरा	हिस्सा कमांक, यदि कोई है	ROU क्षेत्रफल.		
	(सर्वेक्षण कमांक)		हेक्टर	एयर	वर्ग मी.
1	2	3		4	
धामसीन.	522		0	11	20

[फ़ा. सं. आर-31015/19/2001-ओ.आर.-II]

हरीश कुमार, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 13th September, 2004

S. O. 2317.—Whereas by notification of the Government of India in the Ministry of Petroleum and Natural Gas number S.O.1349 dated the 8th June, 2004, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act), published in the Gazette of India dated the 12th June, 2004, the Central Government declared its intention to acquire the right of user in the land, specified in the Schedule appended to that notification for the purpose of laying pipeline for transportation of crude oil from crude oil terminal at Mundra Port in the State of Gujarat to Bathinda in the State of Punjab through Mundra-Bathinda Crude Oil Pipeline by Guru Gobind Singh Refineries Limited (a subsidiary of Hindustan Petroleum Corporation Limited);

And whereas copies of the said Gazette notification were made available to the public on the 27th July, 2004;

And whereas the competent authority has, under sub-section (1) of section 6 of the said Act, submitted report to the Central Government;
And whereas, the Central Government, after considering the said report and on being satisfied that the said land is required for laying the pipeline, has decided to acquire the right of user therein;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby declares that the right of user in the land specified in the Schedule appended to this notification is hereby acquired for laying the pipeline ;

And further, in exercise of the powers conferred by sub-section (4) of section 6 of the said Act, the Central Government hereby directs that the right of user in the said land for laying the pipeline shall, instead of vesting in the Central Government, vest on the date of publication of this declaration, in Guru Gobind Singh Refineries Limited (a subsidiary of Hindustan Petroleum Corporation Limited), free from all encumbrances.

SCHEDULE

Tehsil : Raniwada		District : Jalore		State : Rajasthan		
Name of Village	Survey No.	Part, If Any		ROU - Area		
				Hect.	Are.	Sq.mt.
1	2	3		4		
Dhamsin	522			0	11	20

[No. R-31015/19/2001-O.R.-II]
HARISH KUMAR., Under Secy.

नई दिल्ली, 16 सितम्बर, 2004

का. आ. 2318.— केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी और भारत के राजपत्र में प्रकाशित भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का० आ० 1084 तारीख 28 अप्रैल, 2004 द्वारा उड़ीसा राज्य में पारादीप से पश्चिमी बंगाल राज्य में हल्दिया तक इंडियन आयल कॉर्पोरेशन लिमिटेड द्वारा कच्चे तेल के परिवहन के लिए पाइपलाइन बिछाने के प्रयोजन हेतु उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार के अर्जन के अपने आशय की घोषणा की थी ।

और उक्त राजपत्र अधिसूचना की प्रतियां जनता को तारीख 14 जून, 2004 को उपलब्ध करा दी गई थी ।

और उक्त अधिनियम की धारा 6 की उपधारा (1) के अनुसरण में सक्षम प्राधिकारी ने केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है ।

और, केन्द्रीय सरकार का उक्त रिपोर्ट पर विचार करने के पश्चात यह समाधान हो गया है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन किया जाना है ।

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, घोषणा करती है कि इस अधिसूचना की अनुसूची में विनिर्दिष्ट भूमि में उपयोग का अधिकार पाइपलाइन बिछाए जाने हेतु अर्जित किया जाता है ।

और केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह निदेश देती है कि उक्त भूमि में उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने की बजाय सभी विल्लंगमों से मुक्त होकर इंडियन आयल कॉर्पोरेशन लिमिटेड में निहित होगा ।

अनुसूची

पुलिस थाना : रामनगर

जिला : पूर्व मिदनापुर

राज्य : पश्चिमी बंगाल

गाँव का नाम	अधिकारिता सूचि संख्या	प्लॉट संख्या	क्षेत्रफल		
			हेक्टेयर	एयर	वर्ग मीटर
(1)	(2)	(3)	(4)	(5)	(6)
वाधिया	6	96	00	05	68
		98	00	06	20
		99	00	01	24
		102	00	12	32
		104	00	03	23
		167	00	07	56
		168	00	01	47
		170	00	00	20
		179	00	03	00
		180	00	04	71
		181	00	07	61
		182	00	00	20
		265	00	02	32
		266	00	07	35
		267	00	00	20
		268	00	05	82
		269	00	05	29
		277	00	10	42
		279	00	05	03
		283	00	03	52
		284	00	02	82
		287	00	00	44
		291	00	00	20
		292	00	04	80
		293	00	00	98
		296	00	03	78
		297	00	04	56
		299	00	01	03
		301	00	09	17
		304	00	02	29
		305	00	00	20
		307	00	01	24
		308	00	00	55
		315	00	02	28
		331	00	04	17
		332	00	04	23
		333	00	01	95
		338	00	06	10
		339	00	01	86
		340	00	00	78
		365	00	01	49
		366	00	03	24
		396	00	04	78
		397	00	00	20
		398	00	00	72
		472	00	00	25
		473	00	00	98

(1)	(2)	(3)	(4)	(5)	(6)
		483	00	00	26
		484	00	00	58
		485	00	00	20
		487	00	11	05
		694	00	00	44
		695	00	05	31
		696	00	09	06
		697	00	10	16
		699	00	09	97
		701	00	05	86
		702	00	09	49
		845	00	01	01
		846	00	03	36
		847	00	01	60
		848	00	03	51
		884	00	00	20
		885	00	09	93
		886	00	06	68
		887	00	04	23
		888	00	02	13
		893	00	00	74
		906	00	04	30
		907	00	08	48
		918	00	00	20
		921	00	04	83
		923	00	00	22
		924	00	02	33
		925	00	03	70
		927	00	04	60
		929	00	02	17
		931	00	00	63
		932	00	04	86
		933	00	00	20
		943	00	04	23
		944	00	04	34
		945	00	06	95
		946	00	02	03
		949	00	06	60
		950	00	01	35
		963	00	00	91
		964	00	04	45
		965	00	00	20
		966	00	07	61
		971	00	00	20
		972	00	05	29
		973	00	00	81
		976	00	01	52
		978	00	00	20
		980	00	07	26
		981	00	02	17
		1000	00	03	02
		1001	00	06	00
		1005	00	03	14

(1)	(2)	(3)	(4)	(5)	(6)
		1006	00	04	70
		1008	00	00	79
		1038	00	05	42
		1039	00	05	32
		1040	00	00	20
		1041	00	00	28
		1043	00	02	72
		1042	00	03	75
		1046	00	04	12
		1056	00	00	20
		1219	00	01	79
		1224	00	05	70
		1225	00	02	72
		1226	00	00	20
		1238	00	00	94
		1239	00	02	57
		1240	00	00	82
		1241	00	01	82
		1242	00	00	20
		1243	00	04	10
		1247	00	03	30
		1248	00	00	71
		1249	00	01	31
		472/4038	00	03	56
		483/4039	00	10	27
		94/4189	00	00	52
		269/4201	00	05	57
		279/4203	00	03	74
		280/4204	00	01	24
		179/4206	00	04	04
		286/4209	00	01	09
		278/4210	00	00	34
		170/4215	00	01	93
		182/4218	00	02	97
		182/4219	00	06	25
		268/4221	00	05	66
		306/4240	00	00	80
		333/4247	00	00	56
		472/4265	00	04	03
		887/4321	00	02	25
		887/4322	00	03	15
		888/4323	00	01	54
		888/4324	00	00	34
		700/4339	00	00	42
		701/4341	00	03	45
		886/4359	00	03	29
		886/4360	00	03	90
		918/4366	00	02	34
		928/4369	00	04	50
		932/4370	00	00	20
		932/4371	00	03	48
		943/4372	00	00	95
		951/4375	00	00	51

(1)	(2)	(3)	(4)	(5)	(6)
		973/4376	00	00	20
		976/4377	00	01	59
		1005/4390	00	30	21
		1005/4391	00	00	38
		1046/4399	00	00	85
		971/4405	00	02	43
		1246/4423	00	00	20
		1246/4424	00	00	20

पुलिस थाना : खेजुरी

देवीचक	125	137	00	02	89
		154	00	07	81
		155	00	26	40
		157	00	00	20
		158	00	03	71
		159	00	47	77
		171	00	03	28
		172	00	01	22
		173	00	01	38
		192	00	00	74
		193	00	07	66
		194	00	00	47
		195	00	00	86
		197	00	06	29
		198	00	05	74
		201	00	02	92
		202	00	03	22
		220	00	06	65
		222	00	09	57
		223	00	05	08
		225	00	03	09
		226	00	03	62
		227	00	04	11
		228	00	04	52
		251	00	03	98
		268	00	02	78
		269	00	12	26
		271	00	04	26
		274	00	04	73
		275	00	05	80
		278	00	11	25
		279	00	01	42
		296	00	05	96
		297	00	07	87
		326	00	01	39
		334	00	00	20
		337	00	05	35
		338	00	07	54
		339	00	16	96
		340	00	03	49
		341	00	04	78

(1)	(2)	(3)	(4)	(5)	(6)
		342	00	00	20
		350	00	00	20
		351	00	01	75
		352	00	07	46
		353	00	01	38
		275/864	00	04	01
		296/865	00	09	77
		270/896	00	02	71
		293/941	00	08	32
खारन	127	78	00	02	47
		79	00	08	00
		80	00	10	60
		84	00	05	32
		85	00	02	72
		94	00	15	36
		101	00	07	84
		102	00	04	15
		105	00	01	41
		106	00	01	14
		107	00	04	20
		110	00	01	41
		111	00	04	41
		113	00	00	71
		114	00	02	32
		115	00	04	31
		116	00	01	17
		120	00	01	37
		121	00	09	53
		122	00	00	40
		124	00	03	04
		126	00	24	55
		158	00	01	86
		200	00	01	21
		451	00	00	84
		463	00	00	45
		464	00	00	30
		501	00	05	94
		502	00	03	96
		503	00	03	09
		504	00	25	12
		545	00	00	41
		546	00	00	20
		547	00	00	20
		552	00	03	04
		672	00	00	46
		673	00	00	55
		674	00	03	82
		675	00	05	89
		676	00	00	92
		680	00	06	82
		681	00	05	52

(1)	(2)	(3)	(4)	(5)	(6)
		682	00	04	29
		683	00	01	13
		695	00	00	23
		696	00	06	51
		697	00	06	24
		698	00	02	79
		764	00	00	20
		765	00	00	20
		766	00	03	17
		767	00	06	21
		769	00	02	78
		770	00	05	05
		853	00	01	00
		857	00	00	37
		858	00	06	67
		859	00	12	06
		94/1045	00	06	20
		501/1040	00	06	27
		551/1087	00	00	76
		696/1114	00	08	78
		696/1115	00	00	51
	126	1	00	01	28
		7	00	06	90
		8	00	01	26
		9	00	02	79
		10	00	16	34
		11	00	00	37
		15	00	06	68
		16	00	03	33
		17	00	04	24
		18	00	16	01
		20	00	00	29
		54	00	01	65
		63	00	05	46
		64	00	00	20
		55/3761	00	08	49
		55/3762	00	00	74
स्थाना : भगवानपुर					
पवाड़ी	153	433	00	01	50
		437	00	00	20
		438	00	01	95
		439	00	01	51
		448	00	04	47
		449	00	02	53
		451	00	00	46
		454	00	13	84
		503	00	00	56
		504	00	00	51
		505	00	05	81
		506	00	04	37
		507	00	05	55

(1)	(2)	(3)	(4)	(5)	(6)
		511	00	10	69
		514	00	04	87
		517	00	04	48
		518	00	04	18
		519	00	00	36
		521	00	00	82
		522	00	02	58
		523	00	04	19
		524	00	01	62
		535	00	08	74
		537	00	03	66
		538	00	00	49
		539	00	06	01
		556	00	01	64
		557	00	07	80
		558	00	01	01
		559	00	06	03
		574	00	03	88
		575	00	02	53
		576	00	03	61
		597	00	02	86
		598	00	01	61
		599	00	01	69
		600	00	05	32
		601	00	06	71
		623	00	12	35
		625	00	00	66
		626	00	10	56
		627	00	00	20
		632	00	00	20
		648	00	00	30
		650	00	00	20
		651	00	09	23
		652	00	03	21
		657	00	00	47
		658	00	02	32
		659	00	04	93
		660	00	07	55
		661	00	05	95
		662	00	09	34
		721	00	01	55
		771	00	06	06
		772	00	00	20
		799	00	07	52
		800	00	03	88
		801	00	02	40
		806	00	06	17
		807	00	05	71
		879	00	00	81
		880	00	00	20
		1546	00	00	71
		1547	00	01	37

(1)	(2)	(3)	(4)	(5)	(6)
		557/1614	00	00	82
		499/1610	00	00	20
		601/1612	00	05	46
		623/1623	00	03	68
		539/1615	00	02	53
		576/1617	00	02	42
		628/1622	00	00	20
		558/1700	00	04	03
नारायण दांडे	152	4	00	01	72
		585	00	00	23
		586	00	17	03
		587	00	00	20
		591	00	00	31
		592	00	00	93
		604	00	00	25
		605	00	08	29
		606	00	04	23
		607	00	07	87
		610	00	03	70
		611	00	01	00
		612	00	01	21
		616	00	01	41
		617	00	10	76
		619	00	00	20
		725	00	00	20
		726	00	13	53
		727	00	02	64
		728	00	02	03
		731	00	07	71
		732	00	00	87
		733	00	02	86
		734	00	00	77
		735	00	01	00
		736	00	02	00
		778	00	00	89
		805	00	00	77
		820	00	01	43
		928	00	00	20
		929	00	00	29
		930	00	03	84
		933	00	00	87
		934	00	03	61
		935	00	00	20
		936	00	03	30
		941	00	00	24
		942	00	05	70
		943	00	03	53
		949	00	03	51
		950	00	07	50
		951	00	05	67
		952	00	07	62

(1)	(2)	(3)	(4)	(5)	(6)
		953	00	00	97
		955	00	01	33
		981	00	04	86
		982	00	06	36
		983	00	01	73
		1567	00	00	76
		1568	00	01	05
		1569	00	01	43
		1570	00	07	03
		1573	00	00	62
		1602	00	01	73
		1603	00	02	08
		1604	00	03	39
		1605	00	00	76
		1607	00	00	61
		1608	00	01	57
		1609	00	09	57
		1614	00	00	58
		1617	00	02	00
		1651	00	00	42
		1652	00	00	64
		1662	00	04	07
		1663	00	01	70
		1664	00	02	36
		1665	00	02	31
		1666	00	02	58
		1667	00	02	52
		1668	00	03	42
		1669	00	05	22
		1670	00	04	52
		1671	00	00	20
		1676	00	00	20
		1730	00	00	36
		1731	00	12	30
		1732	00	13	22
		1733	00	00	20
		1792	00	03	11
		1794	00	00	86
		1795	00	09	95
		1812	00	05	43
		1822	00	04	88
		1823	00	04	22
		1824	00	05	68
		1825	00	00	79
		1826	00	06	66
		1880	00	04	94
		1881	00	01	66
		1882	00	06	41
		1883	00	00	58
		1890	00	09	19
		1893	00	00	36
		1894	00	05	48

(1)	(2)	(3)	(4)	(5)	(6)
		1898	00	08	47
		1899	00	01	18
		4507	00	01	17
		727/4436	00	03	38
		936/4465	00	00	78
		1607/4476	00	01	43
		1731/4484	00	05	44
		1732/4485	00	00	20

[फा. सं. आर-25011/9/2004-ओ.आर-1]

रेणुका कुमार, अवर सचिव

New Delhi, the 16th September, 2004

S. O. 2318.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas, published in the Gazette of India vide S.O. No. 1084 dated the 28th April, 2004, issued under sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the right of user in land specified in the Schedule appended to that notification for the purpose of laying pipeline for the transportation of crude oil from Paradip in the State of Orissa to Haldia in the State of West Bengal by the Indian Oil Corporation Limited.

And whereas, the copies of the said gazette notification were made available to the public on 14th June, 2004;

And whereas, the Competent Authority in pursuance of sub-section (1) of Section 6 of the said Act, has submitted his report to the Central Government;

And whereas, the Central Government, after considering the said report, is satisfied that the right of user in the land specified in the schedule appended to this notification should be acquired.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby declares that the right of user in the land specified in the Schedule appended to this notification is hereby acquired for laying the pipelines.

And further, in exercise of the powers conferred by sub-section (4) of section 6 of the said Act, the Central Government hereby directs that the right of user in the said land shall instead of vesting in the Central Government, vests, from the date of publication of this declaration in the Indian Oil Corporation Limited free from all encumbrances.

Schedule

Police Station : Ramnagar		District : Purba Midnapur		State : West-Bengal	
Name of Village	Jurisdiction List No.	Plot. No.	Area		
			Hectare	Are	Square Metre
(1)	(2)	(3)	(4)	(5)	(6)
Badhia	6	96	00	05	68
		98	00	06	20
		99	00	01	24
		102	00	12	32
		104	00	03	23
		167	00	07	56
		168	00	01	47
		170	00	00	20
		179	00	03	00
		180	00	04	71
		181	00	07	61
		182	00	00	20
		265	00	02	32
		266	00	07	35
		267	00	00	20
		268	00	05	82
		269	00	05	29
		277	00	10	42
		279	00	05	03
		283	00	03	52
		284	00	02	82
		287	00	00	44
		291	00	00	20
		292	00	04	80
		293	00	00	98
		296	00	03	78
		297	00	04	56
		299	00	01	03
		301	00	09	17
		304	00	02	29
		305	00	00	20
		307	00	01	24
		308	00	00	55
		315	00	02	28
		331	00	04	17
		332	00	04	23
		333	00	01	95
		338	00	06	10
		339	00	01	86
		340	00	00	78
		365	00	01	49
		366	00	03	24
		396	00	04	78
		397	00	00	20
		398	00	00	72
		472	00	00	25
		473	00	00	98

(1)	(2)	(3)	(4)	(5)	(6)
		483	00	00	26
		484	00	00	58
		485	00	00	20
		487	00	11	05
		694	00	00	44
		695	00	05	31
		696	00	09	06
		697	00	10	16
		699	00	09	97
		701	00	05	86
		702	00	09	49
		845	00	01	01
		846	00	03	36
		847	00	01	60
		848	00	03	51
		884	00	00	20
		885	00	09	93
		886	00	06	68
		887	00	04	23
		888	00	02	13
		893	00	00	74
		906	00	04	30
		907	00	08	48
		918	00	00	20
		921	00	04	83
		923	00	00	22
		924	00	02	33
		925	00	03	70
		927	00	04	60
		929	00	02	17
		931	00	00	63
		932	00	04	86
		933	00	00	20
		943	00	04	23
		944	00	04	34
		945	00	06	95
		946	00	02	03
		949	00	06	60
		950	00	01	35
		963	00	00	91
		964	00	04	45
		965	00	00	20
		966	00	07	61
		971	00	00	20
		972	00	05	29
		973	00	00	81
		976	00	01	52
		978	00	00	20
		980	00	07	26
		981	00	02	17
		1000	00	03	02
		1001	00	06	00
		1005	00	03	14

(1)	(2)	(3)	(4)	(5)	(6)
		1006	00	04	70
		1008	00	00	79
		1038	00	05	42
		1039	00	05	32
		1040	00	00	20
		1041	00	00	28
		1043	00	02	72
		1042	00	03	75
		1046	00	04	12
		1056	00	00	20
		1219	00	01	79
		1224	00	05	70
		1225	00	02	72
		1226	00	00	20
		1238	00	00	94
		1239	00	02	57
		1240	00	00	82
		1241	00	01	82
		1242	00	00	20
		1243	00	04	10
		1247	00	03	30
		1248	00	00	71
		1249	00	01	31
		472/4038	00	03	56
		483/4039	00	10	27
		94/4189	00	00	52
		269/4201	00	05	57
		279/4203	00	03	74
		280/4204	00	01	24
		179/4206	00	04	04
		286/4209	00	01	09
		278/4210	00	00	34
		170/4215	00	01	93
		182/4218	00	02	97
		182/4219	00	06	25
		268/4221	00	05	66
		306/4240	00	00	80
		333/4247	00	00	56
		472/4265	00	04	03
		887/4321	00	02	25
		887/4322	00	03	15
		888/4323	00	01	54
		888/4324	00	00	34
		700/4339	00	00	42
		701/4341	00	03	45
		886/4359	00	03	29
		886/4360	00	03	90
		918/4366	00	02	34
		928/4369	00	04	50
		932/4370	00	00	20
		932/4371	00	03	48
		943/4372	00	00	95
		951/4375	00	00	51

(1)	(2)	(3)	(4)	(5)	(6)
		973/4376	00	00	20
		976/4377	00	01	59
		1005/4390	00	30	21
		1005/4391	00	00	38
		1046/4399	00	00	85
		971/4405	00	02	43
		1246/4423	00	00	20
		1246/4424	00	00	20

Station: Khajuri

ak	125	137	00	02	89
		154	00	07	81
		155	00	26	40
		157	00	00	20
		158	00	03	71
		159	00	47	77
		171	00	03	28
		172	00	01	22
		173	00	01	38
		192	00	00	74
		193	00	07	66
		194	00	00	47
		195	00	00	86
		197	00	06	29
		198	00	05	74
		201	00	02	92
		202	00	03	22
		220	00	06	65
		222	00	09	57
		223	00	05	08
		225	00	03	09
		226	00	03	62
		227	00	04	11
		228	00	04	52
		251	00	03	98
		268	00	02	78
		269	00	12	26
		271	00	04	26
		274	00	04	73
		275	00	05	80
		278	00	11	25
		279	00	01	42
		296	00	05	96
		297	00	07	87
		326	00	01	39
		334	00	00	20
		337	00	05	35
		338	00	07	54
		339	00	16	96
		340	00	03	49
		341	00	04	78

(1)	(2)	(3)	(4)	(5)	(6)
		342	00	00	20
		350	00	00	20
		351	00	01	75
		352	00	07	46
		353	00	01	38
		275/864	00	04	01
		296/865	00	09	77
		270/896	00	02	71
		293/941	00	08	32
Kharan	127	78	00	02	47
		79	00	08	00
		80	00	10	60
		84	00	05	32
		85	00	02	72
		94	00	15	36
		101	00	07	84
		102	00	04	15
		105	00	01	41
		106	00	01	14
		107	00	04	20
		110	00	01	41
		111	00	04	41
		113	00	00	71
		114	00	02	32
		115	00	04	31
		116	00	01	17
		120	00	01	37
		121	00	09	53
		122	00	00	40
		124	00	03	04
		126	00	24	55
		158	00	01	86
		200	00	01	21
		451	00	00	84
		463	00	00	45
		464	00	00	30
		501	00	05	94
		502	00	03	96
		503	00	03	09
		504	00	25	12
		545	00	00	41
		546	00	00	20
		547	00	00	20
		552	00	03	04
		672	00	00	46
		673	00	00	55
		674	00	03	82
		675	00	05	89
		676	00	00	92
		680	00	06	82
		681	00	05	52

(1)	(2)	(3)	(4)	(5)	(6)
		682	00	04	29
		683	00	01	13
		695	00	00	23
		696	00	06	51
		697	00	06	24
		698	00	02	79
		764	00	00	20
		765	00	00	20
		766	00	03	17
		767	00	06	21
		769	00	02	78
		770	00	05	05
		853	00	01	00
		857	00	00	37
		858	00	06	67
		859	00	12	06
		94/1045	00	06	20
		501/1040	00	06	27
		551/1087	00	00	76
		696/1114	00	08	78
		696/1115	00	00	51
Mouhati	126	1	00	01	28
		7	00	06	90
		8	00	01	26
		9	00	02	79
		10	00	16	34
		11	00	00	37
		15	00	06	68
		16	00	03	33
		17	00	04	24
		18	00	16	01
		20	00	00	29
		54	00	01	65
		63	00	05	46
		64	00	00	20
		55/3761	00	08	49
		55/3762	00	00	74
Police Station: Bhagabanpur					
Tethi Bari	153	433	00	01	50
		437	00	00	20
		438	00	01	95
		439	00	01	51
		448	00	04	47
		449	00	02	53
		451	00	00	46
		454	00	13	84
		503	00	00	56
		504	00	00	51
		505	00	05	81
		506	00	04	37
		507	00	05	55

(1)	(2)	(3)	(4)	(5)	(6)
		511	00	10	69
		514	00	04	87
		517	00	04	48
		518	00	04	18
		519	00	00	36
		521	00	00	82
		522	00	02	58
		523	00	04	19
		524	00	01	62
		535	00	08	74
		537	00	03	66
		538	00	00	49
		539	00	06	01
		556	00	01	64
		557	00	07	80
		558	00	01	01
		559	00	06	03
		574	00	03	88
		575	00	02	53
		576	00	03	61
		597	00	02	86
		598	00	01	61
		599	00	01	69
		600	00	05	32
		601	00	06	71
		623	00	12	35
		625	00	00	66
		626	00	10	56
		627	00	00	20
		632	00	00	20
		648	00	00	30
		650	00	00	20
		651	00	09	23
		652	00	03	21
		657	00	00	47
		658	00	02	32
		659	00	04	93
		660	00	07	55
		661	00	05	95
		662	00	09	34
		721	00	01	55
		771	00	06	06
		772	00	00	20
		799	00	07	52
		800	00	03	88
		801	00	02	40
		806	00	06	17
		807	00	05	71
		879	00	00	81
		880	00	00	20
		1546	00	00	71
		1547	00	01	37

(1)	(2)	(3)	(4)	(5)	(6)
		557/1614	00	00	82
		499/1610	00	00	20
		601/1612	00	05	46
		623/1623	00	03	68
		539/1615	00	02	53
		576/1617	00	02	42
		628/1622	00	00	20
		558/1700	00	04	03
Narayandari	152	4	00	01	72
		585	00	00	23
		586	00	17	03
		587	00	00	20
		591	00	00	31
		592	00	00	93
		604	00	00	25
		605	00	08	29
		606	00	04	23
		607	00	07	87
		610	00	03	70
		611	00	01	00
		612	00	01	21
		616	00	01	41
		617	00	10	76
		619	00	00	20
		725	00	00	20
		726	00	13	53
		727	00	02	64
		728	00	02	03
		731	00	07	71
		732	00	00	87
		733	00	02	86
		734	00	00	77
		735	00	01	00
		736	00	02	00
		778	00	00	89
		805	00	00	77
		820	00	01	43
		928	00	00	20
		929	00	00	29
		930	00	03	84
		933	00	00	87
		934	00	03	61
		935	00	00	20
		936	00	03	30
		941	00	00	24
		942	00	05	70
		943	00	03	53
		949	00	03	51
		950	00	07	50
		951	00	05	67
		952	00	07	62

(1)	(2)	(3)	(4)	(5)	(6)
		953	00	00	97
		955	00	01	33
		981	00	04	86
		982	00	06	36
		983	00	01	73
		1567	00	00	76
		1568	00	01	05
		1569	00	01	43
		1570	00	07	03
		1573	00	00	62
		1602	00	01	73
		1603	00	02	08
		1604	00	03	39
		1605	00	00	76
		1607	00	00	61
		1608	00	01	57
		1609	00	09	57
		1614	00	00	58
		1617	00	02	00
		1651	00	00	42
		1652	00	00	64
		1662	00	04	07
		1663	00	01	70
		1664	00	02	36
		1665	00	02	31
		1666	00	02	58
		1667	00	02	52
		1668	00	03	42
		1669	00	05	22
		1670	00	04	52
		1671	00	00	20
		1676	00	00	20
		1730	00	00	36
		1731	00	12	30
		1732	00	13	22
		1733	00	00	20
		1792	00	03	11
		1794	00	00	86
		1795	00	09	95
		1812	00	05	43
		1822	00	04	88
		1823	00	04	22
		1824	00	05	68
		1825	00	00	79
		1826	00	06	66
		1880	00	04	94
		1881	00	01	66
		1882	00	06	41
		1883	00	00	58
		1890	00	09	19
		1893	00	00	36
		1894	00	05	48

(1)	(2)	(3)	(4)	(5)	(6)
		1898	00	08	47
		1899	00	01	18
		4507	00	01	17
		727/4436	00	03	38
		936/4465	00	00	78
		1607/4476	00	01	43
		1731/4484	00	05	44
		1732/4485	00	00	20

[No. R-25011/9/2004-O.R.-I]
RENUKA KUMAR, Under Secy.

नई दिल्ली, 10 सितम्बर, 2004

का. आ. 2319.— केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में नीचे दी गई अनुसूची के स्तम्भ (1) में उल्लिखित व्यक्ति को उक्त अनुसूची के स्तम्भ (2) में की तत्स्थानी प्रविष्टि में उल्लिखित क्षेत्र की बाबत, उक्त अधिनियम के अधीन सक्षम प्राधिकारी के कृत्यों का पालन करने के लिए प्राधिकृत करती है अर्थात् :—

अनुसूची

प्राधिकारी का नाम और पता	क्षेत्र
(i) श्री प्रशान्त कुमार बरूआ, ए.सी.एस, (सेवानिवृत्त) पूर्व डिप्टी कमिशनर, धुबरी, सी-201, अरुणदोय अपार्टमेंट, जी.एस. रोड, (बोरा स्टेशन के सामने) उल्लूबारी, गुवाहाटी (असम)	असम राज्य

[फा. सं. ओ-12016/1/2004-ओ.एन.जी./डी.ओ.-IV]

एन. सी. जाखुप, अवर सचिव

New Delhi, the 10th September, 2004

S. O. 2319.—In pursuance of clause(a) of section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of user in Land) Act, 1962 (50 of 1962), the Central Government hereby Authorizes the person mentioned in column (1) of the Schedule given below to perform the functions of the Competent Authority under the said Act, in respect of the areas mentioned in column (2) of the said Schedule namely:-

SCHEDULE

Name and Address of the Authority	Area of Jurisdiction
Shri Prosanta Kumar Borua, ACS(Retd) Former Deputy Commissioner, Dhubri C-201, Arundoy Apartment G.S. Road (Opp. Bora Service) Ulubari Guwahati (Assam)	State of Assam

[No. O-12016/1/2004-O.N.G./D.O.-IV]
N. C. ZAKHUP, Under Secy.

श्रम मंत्रालय

नई दिल्ली, 21 जून, 2004

का. आ. 2320.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट (संदर्भ संख्या 177/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-5-2004 को प्राप्त हुआ था।

[सं. एल- 12012/145/2001-आईआर (बी-II)]

सी. गंगाधरण, अवर सचिव

MINISTRY OF LABOUR

New Delhi, the 21st June, 2004

S.O. 2320.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 177/2001) of the Central Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the Employers in relation to the management of Central Bank of India, and their workmen, which was received by the Central Government on 28-5-2004.

[No. L-12012/145/2001-IR (B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, LUCKNOW****PRESENT****SHRIKANT SHUKLA : Presiding Officer****Industrial Dispute No. 177/2001****Ref. No. L-12012/145/2001/IR(B-II)****Between**

Sh. Vinay Kumar Rohil,
S/o Sh. Vishal Lal,
Mohalla Lotanpur,
Badaun (U.P.)-243601

And

The Regional Manager,
Central Bank of India,
Regional Office,
B-88, Civil Lines,
Bareilly.

AWARD

The Ministry of Labour, Govt. of India vide his order No. L-12012/145/2001-IR(B-II) dated 29-11-2001 has referred the following issue for adjudication to Presiding Officer, CGIT-cum-Labour Court, Lucknow :

"Whether the action of Regional Manager, Central Bank of India, Bareilly in terminating the services of Shri Vinay Kumar, part time Karamachari .w.e.f. 1-9-2000 is just fair and legal? If not, what relief he is entitled to?"

The admitted facts of the case are that Sri Vinay Kumar Rohil was engaged as daily wager w.e.f. 10-11-99 and he worked till 31-08-2000 for total period of 296 days.

The worker has alleged that despite of having information given by the Central Bank of India, Badaun about working of more than 240 days of the applicant in the calendar year, the Regional Office, Central Bank of India, Bareilly did not call him for test and interview held in Central Bank of India, Badaun for the post of Safai Karmchhari. It is further alleged that the worker was not called, although his full particular were forwarded by the Branch Manager, Central Bank of India, Badaun with recommendations. The worker's plea is that Branch Manager engaged him for part time sub-staff but taking full work of subordinate staff including Safai of the branch and paid sometime Rs. 20/- and sometime Rs. 25/- per day for whole day work. Required information as per circular letter to Central Bank of India about those employees who have completed 240 days of more in a continuous period of 12 months was not given by Branch Manager Badaun upto 31-8-2000. The Central Bank of India, Bareilly sent information for working 290 days only but worker has put in 324 days in a calendar year as per bank record has except Sundays and Holidays of the bank. It is further alleged that bank terminated the services of worker without any cogent reason and have not allowed the provision of Section 25 H of the I.D. Act, 1947 because bank has appointed junior to the applicant in the same vacancy and post in the same branch. Therefore the worker has prayed that he should be reinstated in the bank service from retrospective effect with full back wages and all other consequential benefits as per bank rules. He has also be paid difference of pay for continuous service for 324 days in 12 months. He has further prayed that wages as per Bipartite Settlement for Sundays & Holidays.

The management has denied contents of claim statement and has stated in written statement that the worker was never engaged by the Branch Manager, Badaun. Branch Manager has no power to engage any permanent or temporary post. It is submitted by the bank that interview of selection of part time Safai Karmchhari was

held on 19-4-2000 at Regional Office Bareilly for the vacancy names of unemployed candidates in the waiting list were called from Employment Exchange Badaun and as per the list first four candidates were called for the interview out of them Sri Jai Kumar was selected for the post. Since the name of Vinay Kumar Rohil was at serial number 29 of the list hence he was not called for interview. The management has argued that the application of the workman is not maintainable as the branch manager had no power to engage the applicant. The applicant was never engaged by the bank and the worker is not entitled to any relief.

The worker has filed the following photostat copies of documents :

1. Photo copy of application of Vinay Kumar Rohil address to Regional Manager, Central Bank of India, Bareilly for providing him permanent appointment. The application is dated 18-4-2000 alleging therein he worked for 220 days.
2. Photo copy of Manager (PRS), Central Bank of India Address to all branches under Bareilly Region dated 17-8-2000.
3. Photo copy for information of employees engaged on temporarily basis for more than 240 days or more indicating the name of Vinay Kumar Rohil showing the information he has worked from 10-11-99 to 31-8-2000 total 296 days.
4. Photo copy of Vinay Kumar Rohil dated 10-9-2000 stating therein he has worked in the bank from 10-11-99 to 28-9-2000 and was paid Rs. 20/- per day and sometime Rs. 25 per day as daily wages.
5. Photo copy of application of Vinay Kumar Rohil address to Regional Manager dated 23-10-2000.

The management has filed following photostat copies of documents :

1. A list of the persons registered in Emp'oyed Exchange having the name of Sri Vinay Kumar Rohil at Sl. No. 29.
2. Letter of Manager (PRS) address to all branches dated 17-8-2000.
3. Photo copy of proforma of information given by the Branch Manager.

The workman has examined himself and close the evidence. The opposite party has examined Sri S.K. Gupta management witness and close the evidence.

Heard learned representatives of the parties and persued evidence issue and pleadings on the record.

The issue to be adjudicated by this court is whether the action of management in terminating the services of Vinay Kumar Rohil w.e.f. 1-9-2000 is just and illegal. From the documents filed by the management itself it is admitted that the worker Vinay Kumar Rohil was engaged in place of a part time Safai Karmchari who was promoted to full time Safai Karmchari. From the documents filed by the bank itself it is proved that the worker was engaged on 10-11-99 to 31-8-2000 and the total number of working days the worker put in, for 296 days—

The issue referred is whether the termination of the worker w.e.f. 1-9-2000 is just fair and legal. The worker has not pleaded any where in his statement of claim that he was disengaged on 28-09-2000 although the counsel of the worker has tried to suggest to management witness that worker did work till 28-9-2000.

Since the worker has not specifically pleaded date of termination that he was terminated on 28-9-2000 therefore it is believed that he file the statement of claim on the basis of issue referred to this court.

Sri Vinay Kumar Rohil in his representation dt. 9-10-2000 has stated that he was engaged to work in bank in the clear vacancy of part time Safai Karmchari which was arisen due to promotion of Prem Babu part time safai-karmchari. This representation dt. 9-10-2000 has recital that the Branch Manager has informed that he has worked 296 days in a calendar year. Worker has claimed to have worked for more than 324 days. In this representation also the worker has not mentioned date of termination. Therefore it is difficult to believe that worker did work till 28-9-2000. Had he worked till 28-9-2000 as mentioned he should have stated this fact in his representation dated 9-10-2000. The worker again represented to Regional Manager dated 23-10-2000 in which he requested for reinstatement but he has not mentioned the date on which he was disengaged by the Branch Manager. In the circumstances it is difficult to believe the statement of Vinay Kumar Rohil he stated in para 9 of examination in Chief that he worked till 28-9-2000. It is admitted fact that the Branch Manager is not authorised to appoint any person on temporary or permanently basis. According to the rule only Regional Manager is authorised to appoint any person temporarily or permanently basis.

The Branch Manager has in the exigencies of work is only power to engage someone on daily wages basis and in the present case the worker was engaged to work in place of Ram Babu, a existing part time Safai Karmchari and it is admitted by the bank through documents that the worker was engaged from 10-11-99 to 31-8-2000 for total period of 296 days. The worker has admitted in the course of examination that he was paid Rs. 25/- per day. In the

circumstances it is proved that the worker Vinay Kumar Rohil worked in the capacity of daily wagger in place of Ram Babu who was a part time safai-karmchhari.

Section 25 F of the I.D. Act, 1947 prohibits the retrenchment of a workman employed in any industry without giving him one month notice in writing indicating reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of notice. It is further provided that no workman can be retrenched until the workman has been paid average pay at the time of retrenchment compensation which shall be equivalent to 15 days for every completed year of continuous service or any part thereof in excess of six months and also that workman will be retrenched when the notice in prescribed manner is serviced on the appropriate government (for such authority as may be specified by the appropriate government by notification in the Official Gazette).

The engagement of the workman is admitted the duration of service as per the documentary evidence of the bank has also not disputed. The management has not proved that the workman has been paid compensation or given notice as prescribed in Section 25 F of the I.D. Act, 1947. It is also proved that the workman was part time safai-karmchhari who was paid Rs. 25/- per day. In the circumstances the termination of the worker on 1-9-2000 is illegal and unjustified. The issue is therefore decided in affirmative in favour of the workman.

So far as the relief is concerned the management is pressed hard to justify the termination on 1-9-2000 and therefore the relief of reinstatement is not disputed. The management has argued that in case of the matter since the workman has not worked after 1-9-2000 and therefore he is not entitled to any back wages. The worker has not proved that he was unemployed from 1-9-2000. Since the workman has not worked after 1-9-2000 therefore according to principle of no pay no work, the workman is not entitled to any back wages. In the circumstances the issue referred for adjudication is answer is as follows :—

1. The termination of the worker on 1-9-2000 is illegal and unjustified and issue is accordingly answered in favour of workman.
2. So far as issue about relief of back wages is concerned the same is denied.
3. The workman is entitled to reinstatement immediately as part time safai-karmchhari and is entitled to daily as per bank rules.

LUCKNOW

19-5-2004

SHRIKANT SHUKLA, Presiding Officer

नई दिल्ली, 18 अगस्त, 2004

का. आ. 2321.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ऑयल एण्ड नैचुरल गैस कॉर्पो. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 19/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-08-2004 को प्राप्त हुआ था।

[सं० एल-30012/40/2002-आई आर (विविध)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 18th August, 2004

S.O. 2321.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 19/2003) of the Central Govt. Industrial Tribunal-cum Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the management of Oil & Natural Gas Corporation, and their workmen, which was received by the Central Government on 17-8-2004.

[No. L-30012/40/2002-IR (M)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

SHRIKANT SHUKLA : Presiding Officer

Industrial Dispute No. 19/2003

Ref. No. L-30012/40/2002/IR(M)

dated : 31-1-2003

Between

Shri Baldev Singh Bisht
Village-Dharwal,
Post-Cham Bazar,
Distt. Tehri Garhwal
(Uttaranchal)-249 132

And

Chairman-cum-Managing Director
ONGC, Tel Bhawan
Dehradun-248 001 (Uttaranchal)

AWARD

The Govt. of India Ministry of Labour, vide their order No. L-30012/40/2002-IR(M) dated 31-1-2003 has referred the following issues for adjudication to Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Lucknow :

"क्या ओ.एन.जी.सी. लिमिटेड, देहरादून के प्रबंधन द्वारा श्री बलदेव सिंह बिष्ट को दिनांक 1-6-2002 से नौकरी से निकाला जाना न्यायोचित है। यदि नहीं, तो कर्मकार किस अनुवर्ग का हकदार हैं?"

Although, it was ordered in the reference that the statement of claim complete with relevant documents, list of reliance and witnesses be filed within 15 days of the receipt of the order and in reference order it also contained the fact that a copy be forwarded to the opposite party, but the worker did not file the statement of claim in time. The court ordered that notice be issued to the parties calling upon them to file the statement of claim, complete with the relevant documents, list of reliance and witnesses, but the worker did not file the statement of claim, instead wrote a request letter to the Secretary of this court that the case be transferred to Dehradun. His request was based on his financial condition. As there was no Central Government Industrial Tribunal-cum-Labour Court at Dehradun, therefore, in the interest of the worker, the Presiding Officer decided to hold the court at Dehradun on 20-5-2003. Even on 20-5-2003, the worker did not file any statement of claim and stated that he has not engaged any counsel as yet and therefore, on 22-5-2003, the next date for filing the statement of claim was fixed. The worker even thereafter did not file the statement of claim instead he requested for some more time. The worker was allowed to file the statement of claim on 23-5-2003. The worker's representative filed the statement of claim on 23-5-2003.

The facts of his statement of claim is that he was appointed verbally to work as Peon Gd-IV post by the opposite party and he accordingly worked with the opposite party from February, 1986 to October, 1988 in Geo Science Division (GSD) Field Party CP-38. He worked from December, 1989 to April, 1991 with the Directorate of Admn. Horticulture Deptt., March, 2001 to June, 2001—Directorate of Security (TA/Trg. Division) and from August 2001 to 31st May, 2002 with Directorate of TBG, Quality Assurance Deptt. Thus, the worker has alleged that he has put in more than 240 days of service, including broken period of service. In the circumstances, he is eligible for regular appointment to the post of Group-D for which he has been pursuing by submitting the repeated representations. The worker has, therefore, prayed that his termination of appointment w.e.f. 1-6-2002 by the opposite party be declared illegal, void and have no effect. The worker has also prayed that the court may declare that the services of worker may be continued

and he is eligible for salary w.e.f. 1-6-2002 in the regular Group-IV post with the opposite party.

The worker filed the following papers with his statement of claim :

1. Photocopy of employee entry temporary pass, paper No. 15/5.
2. Photocopy of application of the worker, paper No. 15/6.
3. Photocopy of certificate dated 27-4-1991 purported to be signed by Dy. Director (P&A), paper No. 15/7.

The opposite party has filed the written statement, paper No. A2-18 denying the claim of the worker. The opposite party has alleged that M/s. ONGC Ltd., has a comprehensive Recruitment and Promotions Regulations which provides rules for recruitment and promotions to the employees in ONGC on various categories on regular basis. As per the provisions of R&P Regulations, 1980, no person is recruited/appointed as Grade-IV employee on contingent basis. It is also pointed out that there is no post named as Grade-IV post. The Geo-Science Division (GSD) is one of the divisions of the ONGC, which engages daily rated workers as and when required for casual nature of jobs, depending on the exigencies and requirements of works. The daily rated workers are taken preferably from such local areas, where field parties operate. After completion of the work, the field parties move to another/ other locations, as per geological plan. The daily rated worker, depending on need/requirement, which engaged at new locations and from that areas. The management has alleged that Shri B.S. Bisht was never employed in any regular or permanent capacity under the opposite party. Shri B.S. Bisht was never engaged by the opposite party except for 36 days way back in the year 1988 i.e. to say from 18-7-1988 to 23-8-1988 with the field party No. 38 of Geo Science Division (DSD) as daily rated worker and purely in a casual capacity. In the circumstances, the worker cannot claim benefits at par with the other regular employees of the opposite party. The management has categorically stated that there is no procedure in ONGC to appoint any one verbally what to say for Sh. Bisht. The management also denied the period and place of working, as claimed by the worker. The management has also denied for the genuineness of the documents, paper No. 15/5 and 15/6. It is pleaded by the management that non-employee temporary entry passes are issued to the persons other than the ONGC employees for allowing entry in the ONGC premises. The same is just a security precaution. The management has categorically submitted that the applicant has deliberately tampered with and fabricated the copies with ill designs, ulterior motives and intentions. The worker in the photocopies had deliberately and intentionally got the work "NON" omitted

before the word "employee" mentioned thereon. Further, entries contained therein have been fabricated by the applicant for his ulterior motives and ill designs. The management has its own recruitment rules, which prescribes for reference of name from concerned Employment Exchange, holding of interviews, selection by the Selection Committee. And the worker was never recruited to the post of Peon, as alleged. The worker has not put one year of continuous service with the opposite party. So far as paper No. 15/7 is concerned, the management has categorically denied that such certificate either exists or has been issued to the worker. The management has mentioned that the worker in his statement of claim has mentioned the date of certificate as 27-4-2001, whereas the date of issuance of certificate is 27-4-1991, paper No. 15/7, which contradicts the worker's own statement of claim. It is also stated that the signature of this particular certificate is fabricated. The documents produced by the worker have been alleged to be forged document. It has also been pointed out that the worker has not disclosed the date of his initial joining. The worker was engaged only for 36 days under the opposite party from 18-7-1988 to 23-8-1988 and the worker never agitated his disengagement within the reasonable time and therefore, the claim of worker barred by delay and laches. The order of reference has also been challenged and management has alleged that it is bad in law.

The worker filed the rejoinder and affidavit, paper No. A-23, in which he has reiterated his statement of claim.

The management has filed the following documents :

1. Photocopy of temporary late entry register, paper No. 26/3.
2. Photocopy of disposal of representation of Sh. B.S. Bisht dated 9-4-2001, paper No. 26/4.
3. Photocopy of note sheet regarding forgery of certificate, paper No. 26/5.

The management has also filed the following documents with his list, paper No. A2-28.

1. Photocopy of letter of ONGC No. GP-38/Estt./2002-2003 dated 26-8-2002 regarding engagement of Sh. B.S. Bisht showing 36 days work, paper No. 26/3.
2. Photocopy of extract of bonus payment register for 36 days working 12 days in July, 1988 and 24 days in August, 1988, paper No. 28/4.
3. Photocopy of non-working of Sh. B.S. Bisht-letter of management, paper No. 28/5 to 28/8.

4. Photocopy of letter of Sh. Utpal Chandra, P&AO dated 19-12-2001, paper No. 28/9.
5. Photocopy of application of Sh. B.S. Bisht dated 27-11-2001, paper No. 28/10.
6. Photocopy of letter of Mrs. Usha Malhotra, Manager (P&A) dated 9-4-2001, paper No. 28/11.
7. Photocopy of note sheet dated 18-7-2001, paper No. 28/12.
8. Photocopy of letter of Sh. Sanjay Kumar, DSE (Mech) dated 2-12-2002, Letter No. 28/13.
9. Photocopy of letter of M/s Khalsa Oil Field Equipments Pvt. Ltd., Dehradun dated 3-8-2001 addressed to DSE (Mech) requesting for temporary gate pass, paper No. 28/14.
10. Photocopy of letter of M/s Khalsa Oil Field Equipments Pvt. Ltd., Dehradun dated 11-12-2002 regarding temporary gate pass, paper No. 28/15.
11. Photocopy of Non-Employee Entry Temporary pass, paper No. 28/16.
12. Photocopy of sample of non-employee entry temporary pass, paper No. 28/17.
13. Photocopy of application of Sh. B.S. Bisht undated and addressed to Departmental Officer, ONGC for issue of gate pass with the note to I/C security for issuance of gate pass, paper No. 28/18.
14. Photocopy of application of Sh. B.S. Bisht undated and addressed to Security Officer, ONGC for issuing gate pass, paper No. 28/19.
15. Photocopy of R&P Regulations 1980 of ONGC, paper No. 28/20 to 28/32.
16. Photocopy of Schedule-I of MRPR, 1980, paper No. 28/33.
17. Photocopy of Engg. (Part of schedule of MRPR, 1980), paper No. 28/34 and Schedule from 28/25 to 28/41.
18. Photocopy of detailed contingent bill of wages dated 30-8-2001, paper No. 28/42 to 28/45.
19. Photocopy of detailed contingent bill of wages dated 28-09-2001, paper No. 28/46 to 28/50.
20. Photocopy of detailed contingent bill of wages dated 31-10-2001, paper No. 28/51 to 28/54.
21. Photocopy of detailed contingent bill of wages dated 1-5-2002, paper No. 28/55 to 28/58.

22. Photocopy of detailed contingent bill of wages dated 29/30-4-2002, paper No. 28/59 to 28/62.
23. Photocopy of extract of attendance register 2001-02, paper No. 28/63 to 28/76.

The proceeding was fixed on 18-1-2004 for cross-examination of the worker but his representative sought for adjournment and therefore the case was fixed for 30-12-2003 for cross-examination of the worker and evidence of opposite party, but the worker did not turn up on 30-12-2003. Therefore, on 7-4-2004 the case was fixed for evidence and cross-examination. The worker did not turn up on that date also and therefore on 8-6-2004, the case was fixed for cross-examination of the worker. The worker did not turn up on 8-6-2004. Therefore, it was believed that the worker does not want to face cross-examination. In these circumstances, the case was fixed for evidence of management. On 9-6-2004, the management representative examined Sh. Sanjay Kumar and closed the evidence. Heard, the argument of learned representative of the opposite party. The reference is whether the worker, Sh. B.S. Bisht was terminated on 1-6-2002 and whether the termination was legal, if not whether the worker is entitled for any relief.

The worker has to prove that he was terminated on 1-6-2002, but he has not proved so.

The worker has alleged in the statement of claim that he was employed from February, 1986 to October, 1988 in Geo Science Division (GSD) field party CP-38, December, 1989 to April, 1991 in Directorate of Admn., Horticulture Deptt., March, 2001 to June, 2001 in Director of Security and August, 2001 to 31-5-2002 in Directorate of TBG, Quality Assurance Deptt. (QAD). Interestingly, the worker has not disclosed the date of his joining in various departments of the opposite party.

The worker has based his claim on employee entry temporary pass, paper No. 15/5, photocopy of letter dated Nil, paper No. 15/6 and experience certificate dated 27-4-1991, but he has not turned up to face the cross-examination. It is not worthy that the management has alleged that all documents are result of forgery.

On the one hand, the worker has not turned up to face the cross-examination for his various assignments in different departments of opposite party, on the other hand, the witnesses of the opposite party, Shri Sanjay Kumar has proved that Shri B.S. Bisht has worked as daily rated worker from 18th July, 1988 to 23rd August, 1988 only for 36 days. In reliance for his statement he filed various documents, stated above.

Shri Sanjay Kumar categorically stated on oath that Shri B.S. Bisht did not come for work from 24th August, 1988 onwards.

I have carefully perused the evidence on record. The

learned representative for the opposite party has argued that each employee of ONGC Deptt. has issued Identity Card which bears the Card No. and the CPF Number. Had Shri Bisht been engaged for such a long period, as has been stated by the worker in the statement of claim, he ought to have been issued prescribed identity card. The worker has tried to cook the evidence by fabricating non-employee temporary pass to suit his claim that he was the employee of ONGC.

It is not worthy that the management has filed the specimen of form of non-employee entry temporary pass. The representative of the management has pointed out that the worker has cleverly withhold the original one and has taken the shelter by producing the photocopy of the same deliberately and interestingly hiding the worked 'Non' from the document, paper No. 5/19.

Shri Sanjay Kumar has corroborated the argument by his statement on oath. I perfectly agree with the representative of the opposite party. Non-employee entry temporary passes are meant for visitors who visit casually to ONGC for any purpose, not connected with the employment. The documents produced by the worker is adjudged to be forged and not genuine.

The representative of the management has also pointed out that paper No. 5/20 is also the result of fabrication by Sh. B.S. Bisht. He has drawn my attention to paper, No. 28/14 that the letter of M/s Khalsa Oil Field Equipments Pvt. Ltd. and has argued that the office note written by Sh. Sanjay Kumar has been photocopied, paper No. 5/20. From the perusal of all documents produced by the management, I come to the conclusion that the arguments of the representative of management holds water and accordingly it is held that the application of Sh. B.S. Bisht is not the genuine one, paper No. 5/20. In this connection, my attention is also drawn to the paper No. 28/18 and 28/19, as in both the papers the office note is copied from the same document, i.e. 28/14.

By ex-parte evidence, the management representative of ONGC has also proved that applicant's certificate at paper No. 15/7 is also not genuine. The representative of the management has stated that when the fact of the certificate was brought in the notice of the management, it enquired into the matter and management came to the conclusion that the said certificate seemed to have been forged and the certificate is not genuine. The argument has been supported by the evidence of Sh. Sanjay Kumar.

Learned representative of the opposite party has argued that the applicant has to prove that he has worked more than 240 days in the 12 calendar months preceding his termination and unless he can he may not get any relief. He drawn my attention to the judgment of Hon'ble Supreme Court 2002 (93) FLR 179 between the Range Forest Officer

and S.T. Hadimani, wherein Hon'ble Supreme Court has held that onus to prove that the worker has worked for more than 240 days is not on the management but it is on the claimant who claimed to have worked more than 240 days in 12 consecutive months. Legal position is not disputed.

The representative of the opposite party also pointed out another case of 2002 CA No. 7038/2002 dated October, 29, 2002, page No. 1111 of 2002-III-LLJ between Essen Deiniki and Rajiv Kumar on the same point.

From the arguments of the opposite party, the legal position is that the worker is to prove that he had worked for 240 days or more during 12 calendar months prior to his termination on 1-6-2002. Here the worker has failed to prove this, on the contrary it is found from the evidence that the worker worked only for 36 days from 18-7-1988 to 23-8-1988. It is also proved that the worker thereafter did not work with the management. The worker has no grievance for his disengagement/termination after 23-8-1988. In this circumstances, I am of the considered opinion that the worker did not work from 24-8-1988 onwards till 1-6-2002 and therefore, the question of termination does not arise. The issue is answered accordingly against the worker and in favour of the management; and the worker is not entitled to any relief. Award passed accordingly.

Lucknow SHRIKANT SHUKLA, Presiding Officer
12-8-2004

नई दिल्ली, 18 अगस्त, 2004

का. आ. 2322.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै० यूनिवर्सल सर्विसेज के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 312/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-08-2004 को प्राप्त हुआ था।

[सं० एल-30012/51/2003-आई.आर. (विविध)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 18th August, 2004

S.O. 2322.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 312/2004) of the Central Govt. Indus. Tribunal cum Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Universal Services and their workman, which was received by the Central Government on 17-08-2004.

[No. L-30012/51/2003-IR (M)]
KULDEEP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL CUM LABOUR COURT, CHENNAI

Wednesday, the 30th June, 2004

Present : K. Jayaraman,

Presiding Officer

Industrial Dispute No. 312/2004

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(a) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Universal Services and their Workman)

BETWEEN

Shri M. Kumar : I Party/Workman

AND

1. The Proprietor, : II Party/Management
Universal Services, Chennai.
2. The Deputy General Manager :
Chennai Petroleum Corporation Ltd.
Chennai.

Appearance :

For the Workman : None

For the Respondent No. 1 : Mr. M. Mahalingam,
Advocate

For the Respondent No. 2 : M/s. S. Ramasubramaniam &
Associates,
Advocates

AWARD

The Central Government, Ministry of Labour vide Notification Order No. L-30012/51/2003-IR(M) dated 24-02-2004 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the action of the management of Universal Services, Contractor for CPCL in terminating the services of Shri M. Kumar w.e.f. 18-8-2003 is justified? If not, to what relief the workman concerned is justified?"

2. After the receipt of the reference, it was taken on file as I.D. No. 312/2004 and notices were issued to both sides. Even after the service of notices, the Petitioner has not turned up and not filed any Claim Statement in this

dispute. The 1st and 2nd Respondents have filed their statement of objections.

3. The allegations in the statement of objection filed by the 1st Respondent are briefly as follows :

The Petitioner raised the industrial dispute before Assistant Labour Commissioner (Central) for non-employment against the Respondents. The Petitioner was assigned with the work of housekeeping, attending to electrical faults. But, he was not regular in his work. The Petitioner further alleged that the 2nd Respondent appointed him and to circumvent the law, the 2nd Respondent was made as employer. Any how, the Petitioner did not report for duty from 19-8-2003 on his own accord and did not report for duty later and he has not informed any reasons for his absence. The 1st Respondent being a contractor has to carry out the work agreed in the contract, the 1st Respondent appointed another worker to attend the work of the Petitioner. Hence, it is deemed that the Petitioner has voluntarily left the services on his own accord and there is no termination at all. Hence, the 1st Respondent prays that the claim may be dismissed with costs.

4. The 2nd Respondent in its statement of objection alleged that the 2nd Respondent is a company registered under the Companies Act, 1950 and is involved in oil refining activity and is a manufacturer of various petroleum products and supplying the same to Indian Oil Corporation Ltd. The 2nd Respondent also engages contractors for certain jobs and it is a registered principal employer under the Contract Labour (Abolition & Regulation) Act, 1970. The 1st Respondent is one among the contractors and was engaged to carry out house keeping services in the 2nd Respondent's refinery at Manali. The 1st Respondent is a licensed contractor under the said Act. The 1st Respondent is engaging his own workers for the purpose of fulfilling the contractual obligations at the factory of the 2nd Respondent. The workmen engaged by the 1st Respondent was controlled and supervised by the persons of the 1st Respondent. The 2nd Respondent has absolutely no control or supervision over the workers engaged by the 1st Respondent. Therefore, the petitioner was neither a workman of the 2nd Respondent nor the 2nd Respondent has terminated his services. It is learnt that the Petitioner has joined the services of the 1st Respondent from 1-8-2001 and was working till 31-8-2003 and he remained absent from 1-9-2003 without any information. Even though it appears that the 1st Party was ready and willing to provide employment to the Petitioner, the petitioner has not attended the duties and there is no termination at all as alleged by the Petitioner. However, there is no employer-employee relationship ever existed between the 2nd Respondent and the Petitioner. Even after the notice, the Petitioner has failed to appear before this Tribunal and hence, the Petitioner is not

entitled to any relief. Hence, the 2nd Respondent prays that claim may be dismissed with costs.

5. In these circumstances, the point for my consideration is :

“Whether the Petitioner is entitled to any relief?”

POINTS:—

6. In this case, even after notices, the Petitioner has not turned up before this Tribunal. From the Statements of Objection, it is clear that the Petitioner was not engaged by the 2nd Respondent and he was appointed only by the 1st Respondent, who is a Contractor under the 2nd Respondent. The 1st Respondent in his memo of objection has stated that the Petitioner has not reported for duty from 19-8-2003 on his own accord and he did not report for duty later and he has not informed any reason for his absence and the 1st Respondent appointed another worker to attend the work of the Petitioner. Under such circumstances, the 1st Respondent contended that he has not terminated the services of the Petitioner, on the other hand, the Petitioner himself has voluntarily abandoned the work and therefore, the Petitioner is not entitled to any relief. The 2nd Respondent contended that there was no employer-employee relationship between the 2nd Respondent and the Petitioner and since the 2nd Respondent registered its name as a principal employer under Contract Labour (Abolition & Regulation) Act, 1970 and since the 1st Respondent is a licensed contractor under the said Act, the Petitioner is not entitled to claim any relief against them.

7. In this case, the Petitioner has not appeared before this Tribunal to substantiate his claim that he was appointed by the 2nd Respondent through the 1st Respondent and it is alleged by the 1st and 2nd Respondents that the Petitioner has voluntarily left the services of the 1st Respondent from 19-8-2003 and there, from the allegations made by the 1st and 2nd Respondents, I find the Petitioner has not substantiated his allegation and therefore, he is not entitled to any relief as claimed by him. No. Costs.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 30th June, 2004.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :-

On either side : None

Documents Marked :-

On either side : Nil

नई दिल्ली, 18 अगस्त, 2004

का.आ. 2323.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में; केन्द्रीय सरकार हट्टी गोल्ड माईन्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलौर के पंचाट (संदर्भ संख्या 82/99 को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-8-2004 को प्राप्त हुआ था।

[सं० एल-43012/1/98-आई आर (विविध)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 18th August, 2004

S.O. 2323.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 82/99) of the Central Government Industrial Tribunal/Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Hutti Gold Mines and their workman, which was received by the Central Government on 17-8-2004.

[No. L-43012/1/98-IR (M)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGLORE

Dated : 2nd August, 2004

PRESENT :

Shri A.R. SIDDIQUI, Presiding Officer

C. R. No. 82/99

I PARTY

Shri Ambanna
S/o Basappa,
Watchman,
Gurgunta P.O.,
Lingsugar Tq.
Raichur.

II PARTY

The General Manager,
M/s. Hutti Gold Mines,
Hutti (P O),
Raichur.

AWARD

1. The Central Government, by exercising the powers conferred by clause (d) of Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-43012/1/98/IR (M) dated 22nd July, 1998 for adjudication on the following schedule :

SCHEDULE

"Whether the management of Hutti Gold Mines, Hutti is justified in superannuating Shri Ambanna on 31-7-97 instead of 31-7-99? If not, to what relief the workman is entitled?"

2. The case of the first party workman as made out in the Claim Statement briefly stated is that he was appointed as Underground Worker in Hutti Gold Mines Company by the Management on 7-7-1959 and this fact

is admitted by the management; that he met mining accident and was declared unfit to resume his work in underground and was discharged from duties and remained jobless till 16-4-83; that he was re-appointed by the management as a Watchman on 16-4-83 and his PF contribution was also deducted from his salary during 1983 as evident from the account books maintained by the management with regard to its employees PF contribution; that from 16-2-83 to 31-3-86; the management treated him as Daily Wage Earner and issued appointment order to him by its letter dated 1-4-86 under its own terms and conditions just to violate the same; that he requested the management many a times to confirm his services and give him equal wage for the equal or same nature of work but he was being paid Rs. 600 per month, while, his Co-watchman was getting more than Rs. 1800 per month that when the demand made by him was refused by the management, he placed his demand before the ALC(C) Bellary for conciliation and settlement and he also made request to the Hon'ble Chief Justice of Karnataka High Court seeking remedies under free legal aid scheme and the Hon'ble High Court referred his demands to the Assistant Labour Commissioner (C) Bellary for conciliation and settlement; meanwhile the management retired him from his services w.e.f. 1-8-1997 on the ground that he attained the age of 58 years as against the management standing order 27(1) which provided that retirement age of the worker appointed before 1-4-84, will be 60 years. Therefore, when his first appointment date falls before 1-4-84/7-7-59, he must be given opportunity to work till he attained the age of superannuation i.e. 60 years up to 31-7-99. that demand of the first party came to be resisted by the management before that ALC(C) Bellary; that the management appointed him initially as underground worker on 7-7-59 and due to the accident during the service, discharge him from service in 1964. Then he was reappointed on 16-4-83 as a Watchman, the job permanent in nature. However, the management again issued him an appointment letter on 1-4-86 though he was engaged by the management in permanent nature of work from 16-4-83 itself. He put permanent continuous service up till 31-7-97 therefore, the act of the management in refusing to confirm his services was an unfair labour practice; that the management though engaged the first party as a Watchman which was a job permanent in nature from 16-4-83 to 31-7-97 but he was paid very low consolidated salary of Rs. 600 per month which was later on revised to Rs. 900 at the time of his retirement. Whereas, the monthly salary of the Co-watchman was more than Rs. 1800 during 1980 and was more than Rs. 4000 during 1990 thereby the management exploited his services in violation of provisions of Industrial Law; that the first party since was appointed as a watchman before 1-4-84 his age of retirement shall be 60 years as per the above said management standing order No. 27 (1) and in

the result his services must have been continued till 31-3-99; that for countings the length of service, his date of appointment viz. 7-7-59 should have been considered as he put uninterrupted service from 7-7-59 to 31-7-97 vide Section 25(b) of ID Act. Therefore, he requested the court to pass award confirming his service from the date of appointment i.e. 16-4-83 and his length of service from the date of his initial appointment i.e. from 7-7-1959 shall be considered as continuous service and accordingly his Pension Claim, Gratuity Claim etc. shall be considered. He shall also be given back wage differences from 16-4-83 till today along with bonus for year wise, PF contribution and he shall be reinstated in service till he attained the age of 60 years with all monetary benefits.

3. The Management vide its Counter Statement contended that first party was appointed on 7-7-59 in the Underground department and subsequently he became medically unfit during the year 1964 due to a mining accident and at that time the age of superannuation for such a worker under the terms and conditions of the management was 55 years and whereas the age of superannuation for the workers on surface was 60 years that after the accident the first party was not able to work as previously and was discontinued from his service from 1964 and all his accounts had been settled; that the first party would cease to a worker of the management after 1964 and there was break in service when he was given appointment on humanitarian grounds vide order dated 1-4-86, in the Security Department the work on surface, that he was unable to carry out security functions expected of normal security guard therefore, he is not eligible to claim that he should have been retired on reaching the age of 60 years instead of the age of 58 years; that the first party was not employed on regular basis prior to 1-4-84 as he was given casual employment as and when work was available on daily wage basis and the provisions of the agreement dated 5-10-84 do not cover such workers given work on day to day basis; that Clause No. 27 of the certified standing orders makes it clear that the age of retirement shall be 58 years for the workers to be engaged on surface subsequent to said agreement dated 5-10-84 that the settlement dated 1-4-84 does not cover and it will not apply to casual workers given work on day to day basis and therefore, the first party cannot claim continuity of service from the original date of appointment as he ceased to be a workman from 1964 and was also not a permanent worker under the management subsequent to 5-10-84. Therefore, the first party also cannot claim his casual employment on par with the regular and permanent category of workers so as to claim equal wages. He was given fresh employment only w.e.f. 1-4-86 and therefore, there was no continuity of service prior to the said date and hence he is not entitled to any of the differences of wages from 16-4-83 or PF contribution up to the date of his retirement in as much as points of reference before this tribunal do

not cover the question of wages and this court has no jurisdiction to entertain any other points of dispute except the point of reference before this court. Therefore, management requested this tribunal to reject the claim of the first party in the interest of justice and equity.

4. The management in support of its case examined one witness MW1 and got marked 5 documents at Ex. M1 to M5. The statement of MW1 in his Ex.-in-Chief is as under :—

"I know the facts of this case. In the year 1959 Ambanna, 1st party was appointed in underground department. Due to mining accident to him he was unfitted in the year 1964. His dues were settled. After 10 years he approached us on humanitarian grounds. We cease to engage him on daily wages occasionally. In 1986 he made an application for taking him on regular basis and he was appointed on consolidated wages 1-4-86. He retired in 1997 on attaining the age of 58 years, which is he retirement age. Ex. M1 is appointment order, Ex. M2 is endorsement, and Ex. M3 is letter. Ex. M4 is the letter and Ex. M5 is settlement. The dispute was raised by the first party and before the ALC we contested the matter. In the Settlement of 1984 there is a provision as per Ex. M5(a). The retirement after certain date was fixed as 58 years both under ground and surface workman. The 1st party has rightly retired at 58 years. There is no merit in his reference."

5. The first party examined himself as WW1 and his examination statement in Ex.-in-Chief is as follows :—

"Now I am not in employment. In the year 1959, I joined the Management in Underground services. In the year 1963, I met with an accident. In the year 1964, my services were discontinued on the ground of ill health. Again in 1983, I was given job in Security department. I joined in 16-4-83. I was drawing the salary of Watchman. I worked up to 31-7-1987. My retirement was in the year 1999, but illegally they made me to retire early. Retirement Age was 60 years. In the year 1983 when I joined I was deducting Provident Fund, ESI etc. Since 1997 I am not in service. I may be given benefit of retirement benefits for 2 years."

6. I would like to refer to their statements in cross-examination and so also the documents marked as and when found relevant and necessary. The learned counsel for the respective parties have advanced their arguments in line of their respective contentions made in the Claim Statement as well as in the Counter Statement. The facts undisputed in this case are that the first party was appointed as underground worker in the Gold Mines of the management company on 7-7-59 and he having been met with a mining accident and having been medically declared unfit to work as underground worker, was discharged from service in the year 1964. It is again not in dispute that as per clause 16 of the Bipartite

Settlement dated 5-10-84, an agreement was reached between the union and the management where the age of retirement of underground workers was raised from 55 to 58 years and the retirement age of the workers viz. underground employees as well as surface employees was fixed at 58 years, in the case of newly recruited employees i.e. the employees appointed subsequent to the above said settlement. Now in the first instance it is the case of the first party that he being appointed as underground worker in the year 1959 and then being re-appointed as a casual worker in the year 1983 after he was discharged from service in the year 1984, his retirement age should have been considered as 60 years, which was prevailing before the above said statement. His next case in the alternative is that even if the services rendered by him subsequent to initial appointment in the year 1959 are not taken into account, he being discharged from service in the year 1964, then his services will have to be taken note of from the year 1983 onwards and he shall be given the benefit of age of retirement of 60 years in vogue earlier to the said statement and clause 27(1) of the certified standing orders inserted and modified in the light of the said settlement. Whereas, it is the case of the management that services rendered by the first party from 1959 till 1964 can never be considered in deciding his age of retirement as for all purposes, he ceased to be the employee of the management when he was discharged from service in the year 1964 and undisputedly was not in the services of the management till he was engaged by it as a Casual worker in the year 1983. The next contention is that the services of the first party as a Casual Worker taken intermittently on day to day basis subject to the availability of the work during the period from 1983 till he was given letter of appointment in the year 1986 also cannot be considered in deciding the age of retirement. It was contended that the first party for the first time was appointed on regular basis with specific appointment order dated 1-4-86 on a consolidated salary of Rs. 600 per. month and therefore, it being the case of appointment subsequent to the date of the said settlement his retirement age would be 58 years and accordingly he was retired from service w.e.f. 1-8-97 when he attained the age of superannuation completing the age of 58 years.

7. The contention of the first party that the services rendered by him during the year 1959 and 1964 must count to determine his age of retirement as 60 years on its face itself is liable to be discarded. It is admitted by the first party himself that he having been met with the mining accident and having been declared medically unfit to work in underground department, was discharged from service in the year 1964. In his own admission he remained jobless till 16-4-1983 when he was engaged by the management as a Casual worker. Therefore, the long break of his service from the 1964 till the year 1983 would disable him to claim the benefits of his services rendered from the year 1959 till the year 1964. He was not at all in the services of the management from 1964 till 1983. Therefore, his claim to count the services rendered by him earlier to the

year 1964 cannot be entertained for retirement on superannuation i.e. 60 years prevailing earlier to the aforesaid settlement dated 5-10-1984. As noted above it is the case of the management that first party was being engaged as a casual worker on day-to-day basis intermittently as and when the work was available during the year 1983-84 and earlier to his regular appointment made on 1-4-86 and therefore the services rendered by him as a Casual Worker prior to his regular appointment dated 1-4-86 cannot be counted and since regular appointment was subsequent to the above said settlement dated 5-10-1984, his age of superannuation would be 58 years and therefore, he was rightly retired from services on attaining the said age as on 1-8-97.

8. Taking into consideration the contention taken by the management that first party was being engaged as Casual Worker from 1983 onwards and so also taking into consideration the admissions made by the management witness, MW1, his Ex. in Chief as well as cross examination, the contention taken by the first party that he was in the services of the management continuously as a Watchman against the permanent nature of the job, in my opinion holds good. In his Ex. in Chief as noted above MW1 stated that after the first party was declared unfit in the year 1964 he approached the management after 10 years and on Humanitarian Grounds they engaged him on daily wages, casually. If this statement of the MW1 is to be acted upon and taken on its face value then it would appear that long before 1983 itself the management engaged the first party as a daily wager. Now coming to his statement in cross examination in no uncertain terms, he says that the first party was engaged in the services of the management somewhere in 1983 as a casual labourer and he was covered by provident fund scheme. He further stated after 1983, the first party was working on surface as a Security Watchman.

9. Therefore, this statement of MW1 nowhere gives an indication that the first party was being engaged as casual labourer on day to day basis intermittently subject to the availability of the work but the said statement would make it abundantly clear that he was being engaged from 1983 onwards without any break in service and that there was deduction of his salary towards PF contribution. Arguments were advanced for the management that even a casual worker also is to be covered under the Provident Fund scheme and therefore, this is not a factor to be counted for the services rendered by the first party. I do not agree with this argument. If the first party was to be engaged on day to day basis that too whenever the work was available then, it was not binding on the management to get deduction of his salary towards PF contribution. The very fact that he was being covered under the PF scheme, that too, from the year 1983 itself must lead to an inference that he was being considered as a regular casual worker of the management and not a casual worker carrying out his

work whenever it was offered to him. Moreover in the face of the admission by the management that the first party was being engaged as a Casual worker intermittently, heavy burden cast upon it to lead oral and documentary evidence to suggest that he did not work with the management continuously but casually. On the other hand the oral evidence in the statement of MW1 discussed above is fatal to the very case of the management. Therefore when we proceed on the assumption that the first party was in regular service of the management as a Watchman continuously from 1983 itself and that a formal appointment order came to be issued in his favour only in the year 1986, then the only conclusion to be arrived at will be that he was very much in the service of the management earlier to the above said Bipartite Settlement taken place on 5-10-84. It is in this view of the matter, the natural corollary to follow would be that the age of retirement as 60 years prevailing prior to the date of settlement must be also applicable to the first party and he should have been given the benefit of above said age of retirement allowing him to complete his services till he attained the age of superannuation by completing his services till 60 years. In the result it is to be held that age of retirement of the first party was 60 years and the action of the management in retiring him on attaining the age of 58 years was illegal and invalid.

10. Now coming to the question of relief, the age of retirement in case of the first party on completing the age of 60 years should have been 31-7-99 and since the above said date has already been expired, the next question will be the benefit to be granted to the first party for the period of 2 years of service he could have rendered under the management had he retired on 31-7-99 instead of having been retired on 1-8-97. It is the case of the first party that after his regular appointment in the year 1986 he was being paid consolidated salary of Rs. 600 per month and it was increased to Rs. 900 per month in 1993. This fact has been very much admitted by the management at para 9 of its Counter Statement. Now, therefore, going by the above said salary of the first party, his annual income would come to Rs. 10,800 and at this rate his income for two years would have been Rs. 21,600. Since he has been denied this income for a petty long period of 2 years, one must also take into consideration the interest, the first party could have earned on the said income if it was invested in some nationalised or commercial bank. Therefore taking all these facts and circumstances into account, it appears to me that ends of justice will meet, if the first party is paid lumpsum of Rs. 25,000 towards the relief claimed by him for his premature retirement.

11. The contentions raised by the first party that he was not being paid equal wages for equal work and that his co-watchman was getting a salary of more than Rs. 1,800 and whereas he was being paid initially only Rs. 600 per month and thereafter Rs. 900 per month and therefore, he is entitled to difference of wages, as was

rightly argued for the management is not to be considered in this case. The points of reference do not cover the question of payment of wages or less wages and any relief to be granted in that regard. Hence the question of wages not covered under the points of reference cannot be considered in this proceedings. Accordingly the reference is answered and following award is passed.

ORDER

The management is directed to pay a sum of Rs. 25000 towards full and final satisfaction of the claim of the first party with interest at the rate of 6 per cent per annum from the date of publication of this award till the realisation. The amount shall be paid within a period of 3 months from the date of publication of this award or else it will earn interest at the rate of 12 per cent per annum till the payment is made.

(Dictated to P.A. transcribed by per corrected and sign by me on 2nd August, 2004.)

A. R. SIDDIQUI, Presiding Officer

नई दिल्ली, 19 अगस्त, 2004

का.आ. 2324.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एम.ई.एस. के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चंडीगढ़ के पंचाट (संदर्भ संख्या 113/99 को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-8-2004 को प्राप्त हुआ था।

[सं० एल-13011/14/98-आई आर (डीयू)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 19th August, 2004

S.O. 2324.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 113/99) of the Central Government Industrial Tribunal/Labour Court, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M.E.S. and their workmen, which was received by the Central Government on 19-8-2004.

[No. L-13011/14/98-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

PRESIDING OFFICER : SHRI KULDIP SINGH

Case No. I.D. 113/99

Received on : 8-6-99

Decided on : 1-7-2004

Branch Secretary, Chandigarh Area MES Workers Union, H.O. 104, Sector, 20A, Chandigarh.

Applicant

Versus

1. The Chief Engineer, Western Command, MES, Chandimandir.
2. The commandant, Works Engineer, Head Quarter (air Force), Chandigarh.

Respondents

APPEARANCES

For the workman : Shri D. R. Sharma

For the management : Shri H. C. Arora.

AWARD

Exercising the powers conferred U/s 10 of the Industrial Disputes Act 1947, (hereinafter referred to as the Act), the Central Govt. vide No. L-13011/14/98-IR(DU) dated 26th of April 1999 has referred the following dispute to this Tribunal for adjudication :-

"Whether the action of the Chief Engineer, Western Command Chandimandir and Commander Works Engineer, Head Quarter (Air Force), Chandigarh in not giving the promotion to Shri Daljit Singh Sr. Refrigerator Mechanic HS Grade I, from the date the vacancy was available, is legal and justified? If not, to what relief the workman is entitled to?"

2. On the receipt of the reference from the Govt. of India, notices were issued to the parties and they appeared on 13-10-1999. The workman filed the statement of claim on that date and the respondent filed the written statement on 29-3-2000. Petitioner filed his affidavit on 23-11-2000 and the respondent filed one affidavit on 4-5-2001. After cross-examination of the witnesses of the parties, their evidence was closed on 14-2-2002. The parties filed written arguments and preferred for deciding the matter on that basis.

3. Claim of the petitioner as made out, by him, in his claim statement, is that in view of the grievances of the workers, the management agreed to remove the stagnation of the service career of the workers and in that regard an office memorandum was issued on 15-10-1984, by which the workers, engaged by MES, were given three grade structure, to different categories and also issued instructions as to how the posts created will be filled in. That, according to the instructions issued by the Engineer-in-Chief Branch of Headquarter, 20% of the vacancies in a particular category were to be filled on the basis of seniority. In that case no test or selection was to be made but the effect of the promotion as grade II skilled, was to be given w.e.f. 15-10-1984. The next 15% of the vacancies were to be filled by holding trade test and in that category also the effect of promotion was to be given w.e.f. 15-10-1984. There was further stipulation in the instructions that in case a worker falling in the category of 15% i.e. who was to be promoted on the basis of trade

test, He was to be given another chance and the whole process was to be completed by Jan. 1986. The petitioner further claims that the management held first trade test in the year 1987 but unfortunately the petitioner could not qualify the same. The management, however, failed to hold next trade test till 1995. In the trade test conducted in the year 1995, the petitioner also qualified but he was given effect of promotion, as Grade-I skilled, w.e.f. 14-3-1996, whereas, as per the instructions the effect was to be given w.e.f. 15-10-1985. The petitioner made representations, in reference to Engineer-in-Chief Branch letter No. 1318/1374E-III dated 17-6-1987. Letters dated 23-1-1991, 22-1-1992 and 5-3-1993, exchanged between the Union of the petitioner and the management, including the Commander Works, Air Force, Chandigarh are further witnesses of the fact that the matter remained under consideration. The minutes of the meetings with JCM held on 14-3-1992, 29-11-1996 and letter 22-9-1997 further show that the strength of highly skilled Grade-I senior mechanic refrigeration was 18 and only 9 posts were filled. That CWE also requested the higher authorities to accord sanction to the implementation of three grade structure. This also is witnessed by letters dated 5-3-1993, 14-3-1997, 21-9-1997 and the minutes dated 21-11-1996 further reveals that the demand of the petitioner was genuine and was covered by the instructions issued vide letter dated 13-3-1997. The claim of the petitioner further gets support from the recommendation of G.E. Air Force in the light of the letter dated 8-2-1993 issued by the Engineer-in-Chief Branch.

4. The petitioner further submits that in view of the similar instruction, the Amritsar, authorities gave promotion to the workers as highly skilled Grade-I w.e.f. October 1985, though the trade test was held in the year 1993; that the letter dated 22-9-1987 from the Engineer-in-Chief, Western Command, further reveals that he had called explanation from Chandigarh Zone as to why the trade test was not held within the specified date i.e. 30-1-1986 and directed that the cases of promotion be examined in view of letter dated 21-8-87.

5. The petitioner in the end has sought the effect of his promotion as highly skilled Grade-I w.e.f. 1-10-1985 and any other relief which this Court deems fit and proper in the circumstances of the case.

6. Respondents opposed the claim of the petitioner by raising as many as nine preliminary objections and in a way they have stated their case in the preliminary objections only. It is stated by them that there was no unfilled vacancy of refrigerator mechanic HS-I till 1995 and as such no trade test and DPC was held till 8-5-95 and the claim of the petitioner to get promotion earlier to that is without any basis. That the reference is bad for laches on the part of the petitioner. It is submitted by them that the petitioner had appeared, along with other eligible candidates, in the trade test for the post of

refrigerator mechanic HS-I in March/ April 1987, but he failed and those passed were given ante dated promotions w.e.f. 15-10-1985. The petitioner has come to claim his promotion after 12 years and as such his claim is bad. It is also submitted by the respondents that before his regular appointment as refrigeration mechanic the petitioner had worked on casual basis till April 1970. He was promoted as HS-II on 15-10-1984 on the basis of his seniority and in compliance of the grade structure. At that time also he was given antedated seniority. The respondents admitted that three grade structure was introduced by the Govt. of India vide their letter No. 3810/DS/O&M/Civ-1-84 dated 15-10-1984. However that grade structure could not be implemented for want of some clarification from the higher authorities. As a result thereof HS-I mechanics were promoted and they were given seniority w.e.f. 15-10-1984. However the applicant failed in the test. Therefore, he could not be promoted. They further admitted that as per the requirement of grade structure policy, holding of the trade test for HS-I was required to be completed by 30-6-1986 but the same could not be done due to the pendency of various cases before the Central Administrative Tribunal and it is only in March/ April 1987 that the trade test could be conducted. They have, however, denied that the grade structure policy contained stipulation regarding providing of two chances to refrigeration mechanics HS-II candidate. Thus they have denied any irregularity in finalizing of DPC on the basis of trade test giving antedated seniority from 15-10-1985. It is further claimed by them that since the applicant had passed the trade test of HS-I in the year 1995, when the vacancy occurred, so he was promoted w.e.f. 14-3-1996.

7. Reacting to para wise claim of the petitioner it is submitted by the respondent that the reply has been given in detail in the preliminary objections. That the petitioner has not giving correct statement of facts. That there was no unfilled vacancy of refrigeration mechanic HS-I till 1995, therefore, no trade test and DPC was held till May 1995. They have further denied knowledge about the circumstances in which CWE Amritsar had granted antedated seniority to official who had been promoted in the year 1993 and according to them, the petitioner can not based his claim on that assumption. They further submits that delay for finalization of trade test was due to the cases pending before the Central Administrative Tribunal Chandigarh and thus the respondents can not be held responsible for that. According to them the petitioner was also a party petitioner in one of those cases in which the C.A.T Chandigarh had held that the petitioner has claimed his promotions, as HS-I, on the basis of forged documents, but despite that the petitioner was promoted as HS-I.

8. In Support of his case, the petitioner has produced a number of documents out of which some have been exhibited such as affidavit of the petitioner Ex.W1 copy of extracts Ex. W2, Photo copy of letter Ex.W3,

minutes of meeting held at headquarter of Commander of Works Ex.W4 copy of part-II order No. 30/95 dated 24-7-95 Ex.W5 documents of the respondent Ex.M1 the affidavit of Lt. Col. H.D Sharma, Ex./M2 a letter from Govt. of India, Ministry of Defence dated 8-4-1986 addressed to the three chiefs of the Indian Defence Forces.

9. I have heard the learned counsel for the parties who have relied upon the written arguments, filed by them which are duly supported by some of the authorities and have also gone through the file.

10. From the pleadings of the parties, admitted facts which emerges out are that the petitioner Daljit Singh had joined services with the respondents as refrigeration mechanic on casual basis from 14-9-67 and then on regular basis, in the same capacity, from 2-4-1970. The petitioner was promoted as HS-II refrigeration mechanic w.e.f. 15-10-1984 as a result of grade structure policy enunciated by the Govt. of India, Ministry of Defence vide their No. 3810/DS/O&M/Civ/1/84 dated 15-10-1984. There is also no dispute that the petitioner was promoted as HS-I w.e.f. 14-3-1996, vide order of the same date.

11. The dispute between the parties narrow downs to this fact as to from which date the petitioner is entitled to get the effect of his promotion as refrigeration mechanic HS-I. According to the petitioner three grade structure policy of the Govt. of India, which was enforced as a result of negotiation between the workmen through their Union and the Govt. of India. According to that policy 20% vacancies in each category were to be filled in on the basis of seniority without resorting to any trade test and the effect was to be given w.e.f. 15-10-1985. The next 15% were to be filled after holding trade test and in that case also the effect was to be given from 15-10-1985. In case an employee failed to qualify trade test in the first attempt, he was to be given another chance to qualify that test and in that case also the effect of the promotion was to be given from an earlier date. The petitioner claims that in terms of three grade structure policy he was to be given two chances to qualify for his promotion to refrigeration mechanic HS-I. He has not disputed that he failed in the first attempt in the year 1987. But his claim is that he qualified the trade test in the year 1995 and in view of the policy of the Govt., the effect to his promotion was to be from 15-10-1985. On the Contrary the respondent have disputed the claim of the petitioner stating that since the petitioner had failed in the first test, conducted in the year 1987, so he was not promoted and thereafter no vacancy of HS-I occurred in the department and as such he could not be promoted till 1995 when the second test was conducted, in which the petitioner qualified so he was promoted w.e.f. 14-3-1996.

12. If we examine Ex. W4 issued by the headquarter Commander Works Engineer, Air Force, Chandigarh II, the existence of which has not been denied by the respondent. We found that this documents is an attested true copy under the

hand of Asstt. Controller F&A of the office of Civil Surgeon, Fatehgarh Sahib and is shown to have been issued by the Officiating Commander Works Engineer on 14-3-1997, Sub para (b) para (2) of it is clearly reads as under :

“(b) implementation of three grade structure industrial personnel.

Instructions for implementation of three grade structure were issued by Govt. of India, Min. of Def. Vide their letter No. 380/DS/CIC(iv-I) dated 15 Oct. 84 but the total vacancies were not filled during 1985-86 as per the directions and ratio of 15:20:65. As per the instructions 20% of the vacancies were to be filled according to the seniority without passing any trade test of HS-II and the balance 15% after conducting trade test according to the seniority. Senior personnel were required to be given two chances to clear the trade test and then the other persons have to be considered for trade test to avoid any anomaly. It is seen from the records held with this HQ that after one chance during 1986-87 the second chance to clear the trade test was given during 1994-95 and the vacancies remained unfilled/vacant.”

13. In the face of this document there remains no doubt that the Govt. of India had issued instructions for the implementation of three grade structure policy according to which 20% of the vacancies were to be filled according to the seniority. Senior personnel were required to be given two chances to clear the trade test and then only the other persons were to be considered for trade test, to avoid any anomaly. According to this letter, the first test was held in the year 1986-87 and the second test in the year 1994-95. In this between the vacancies remained unfilled/vacant.

14. The managements's witness Lt.Col. H.D Sharma in his statement recorded in this Court on 14-2-2002 admitted that the first trade test was held in the year 1986 and the second trade test was held in the year in 1994, as is stated in Ex. W4 and during that period vacancies remained unfilled and vacant. He specifically admitted that 9 vacancies remained vacant. This belies the claim of the respondent that after 1987 no vacancy of HS-I refrigeration mechanic was available and trade test for HS-I could not be held till 1995, when the vacancies occurred. The respondent witness has himself admitted that there were 9 vacancies available when the second test was conducted.

15. The respondent have failed to give any explanation as to how the three grade structure policy was implemented by CWE Amritsar by promoting a mechanic to HS grade I in the year 1993 giving effect from 15-10-1985. They only submitted that they can not say anything as to in what circumstances the promotion was given by the CWE Amritsar and that the petitioner can not claim relief on the basis of some erroneous order

passed in some other case. I am unable to agree with them, because the present petition has been filed against, among others, Engineer-in-chief Branch Army H.Q. New Delhi which has control over all the Chief Engineers of different commands of the Armed Forces including CWEs posted at Amritsar and Chandigarh. There is therefore, no justification for the respondents to claim that the effect of promotion to the petitioner could not be given before the date it was actually given since there was no vacancy against which the second trade test could be conducted. It is true that as per the policy the holding of trade tests were to be completed much earlier than the same were held. Assuming for the sake of arguments that first trade test was not held earlier than 1987 because of the some orders passed by the C.A.T. Chandigarh, though the respondent have not placed on record any thing to show that there was any such directions from the CAT, yet the respondent could not deny a right accrued to the mechanics in terms of three grade structure policy by not holding the trade test in time. If they have done it, as is in the present case, it is to be presumed that the time limit to complete the holding of trade test was extended till the second test was conducted. The mechanics are entitled to that benefit. They could not be denied the right to appear in the trade test and to have two chances to qualify the same.

16. The respondents have contested the claim of the petitioner mainly on two counts. Firstly that the claim is not maintainable since it is visited by laches. Supporting their case it is stated by them that as per his own case, the petitioner along with other candidates was given the chance to appear in the trade test in July 1987 but the petitioner could not qualify the same and it is from that date the cause of action arose to the petitioner to seek redressal of his grievances. The petitioner has come to the Court after a long time therefore, his petition is bad for delay in filing the same. They have taken support from the judgments reported as Nadungari Bank Ltd. Vs. K.P.M. Kutti and others 2000(3) SLJ 22(SC) and the management of M/s. Indian Iron and Steel Co. Ltd. Vs. Parlad Singh 2000(4) RSJ687(SC). The second attack to the maintainability of the petitioner is that the petitioner can not be granted any relief since he is seeking the relief which is likely to effect those who have not been impleaded as parties in the petition. It is their case that the petitioner has claimed seniority from 15-10-1985 and in this between a number of employees were promoted in the cadre of the petitioner and if the petition is allowed, it would amount to deciding the matter in the absence of these persons who will be effected by the Court order. In this regard he has taken the support of two judgments reported as Jaswinder Singh Passi Vs. Registrar Co-operative Societies. Punjab 1998(2) RSJ 470 (Pb. & Haryana) and Central Bank of India Vs. S.Satyam, JT 1996(7) SC 181.

17. I have considered both the points raised by the counsel for the respondents. In the case reported as Nadungari Bank (Supra), the petitioner was dismissed from service in the year 1972, who filed application seeking reference in the year 1980, after two other similarly placed employees were given the relief of reinstatement by the High Court. The Supreme Court rejected the reference saying that the petitioner had not come within reasonable time to lodge his claim and his mere ground that he got awakened after similarly placed workers were given the relief so his case may also be referred for adjudication. The Hon'ble Apex Court held that though no time limit is there for making reference under Section 10 of the Act, yet it must be done within reasonable period and for reasonable cause. Similarly in the case of M/s Indian Iron & Steel Co. Ltd. (supra), the petitioner had come to seek redressal to his claim after a period of 13 years for the date of termination of his services. The petitioner failed to produce any evidence to explain the delay of 13 years. It is in that situation that the Hon'ble Supreme Court held that the references were not maintainable being bad for laches.

18. If we look at the facts of the case in hand, I am of the opinion that the case of the petitioner is quite different on facts. He had appeared in the trade test held in the year 1987, but could not qualify the same. The second test was held in the year 1995. Which the petitioner qualified but he was given effect of promotion from the year 1996. There is sufficient correspondence on the record to show that the petitioner made representations for giving effect to his promotion from 15-10-1985 the date agreed to between their Union and the Respondent. Alongside he also filed petition before the Conciliation Officer which resulted into a reference dated 26-4-1999. There is not such a delay on the part of the petitioner which can be said to be a long delay as was in the cases of the petitioners in the reported cases referred to by the counsel for the respondents. The delay in this case was about two years and during that period also the petitioner did not rest and was actively following his case. In this regard documents Ex. W3, W5 can be referred to. In the circumstances, the judgements referred to by the counsel for the respondent are not helpful to him in the present case.

19. The other contention of the respondent is that the petitioner can not be allowed since the petitioner has not arrayed all those workers who were promoted as HS-I from 1987 till the date the petitioner is promoted in the year 1996. In the absence of that the petitioner can not be allowed the relief sought by him. In the case of Jaswinder Singh Passi (supra), the petitioner had come to the Court to claim seniority without impleading the persons likely to be adversely effected by granting the relief sought for. It was in that situation that the Division Bench of Punjab & Haryana High Court held that so long the persons likely to be effected by the relief sought for if granted, no relief can be granted to the petitioner. However

in the same judgment in para 5, it is admitted that where a pure question of principle is involved. The parties may be irrelevant. Thus the claim of the respondent is not tenable for two reasons. Firstly the petitioner has not come to this court for seeking relief of seniority in service. In the prayer clause of his petition he has only requested for a relief of direction to the respondent to promote him as HS-I w.e.f. 1-10-1985 alongwith consequential benefits. There is no specific request of the petitioner for the relief of seniority, though in loose term he has sought direction/order which ever is deemed fit and proper by the Court in the circumstances of the case. Since there is no specific plea for placing of the petitioner in the seniority list at the appropriate place there is no necessity to implead all those likely to be effected by the relief sought in the petition. Moreover the claim made by the petitioner is on the basis of pure principle. Since whatever is being claimed is on the basis of three grade structure policy of the Govt. of India and if the claim of the petitioner is allowed it will flow only from that policy. Moreover the competent authority has the powers to decide the plea of seniority of HS-I grade in case the petition is allowed and all those who are likely to be effected, if the petition is allowed has the right of hearing and other forum available under the law. The court at this stage has only to decide as to from which date the order of promotion of the petitioner is to be given effect to.

20. After due consideration of the pleadings of the parties and arguments submitted by them both in writing and orally, I am of the opinion that the petitioner is entitled to the relief he has claimed for the reason that the delay in conducting the test was on the part of the respondent and they could not deny to the petitioner the right of two chances to appear for the test and right of getting the effect of promotion from antedate in term of three grade structure policy. In these circumstances, the reference made by the Govt. of India is answered in the terms that the action of the Chief Engineer, Western Command, Chandigarh and Commander Works Engineer, Head Quarter (Air Force), Chandigarh in not giving effect to promotion to Daljit Singh, Sr. Refrigerator Mechanic HS Grade-I from the date the vacancy were available, which according to Lt. Col. H.D. Sharma, were available being vacant. The petitioner is therefore, entitled to the effect of his promotion as refrigerator mechanic HS-I from 15-10-1985. He is presumed to have been promoted from that date and entitled to all consequential relief including monetary benefits. As regard question of his seniority, competent authority shall examine the same in view of the Court order after giving due notices to all those who are likely to be effected by the Court order. Award is passed in these terms. Let a copy of the Award be sent to the Govt. of India.

Chandigarh

KULDIP SINGH, Presiding Officer

नई दिल्ली, 19 अगस्त, 2004

का. आ. 2325.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडिया सिक्युरिटी प्रेस के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय, नासिक के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-8-2004 को प्राप्त हुआ था।

[सं० एल-16011/5/99-आई आर (डीयू)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 19th August, 2004

S.O. 2325.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Labour Court, Nashik as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of India Security Press and their workmen, which was received by the Central Government on 19-8-2004.

[No. L-16011/5/99-IR (DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

**BEFORE SMT. C.A. NATHANI, PRESIDING OFFICER,
LABOUR COURT, NASHIK**

Reference (IDA) No. 56/1999

BETWEEN:

The General Manager,
India Security Press,
Nashik-Road.
(Maharashtra)

.....First Party/employer

AND

Shri B.R. Chitale,
Chitale Nivas, Ingale Nagar,
Jail Road, Nashik-Road.
(Maharashtra).

.....Second Party

Present : Smt. C.A. Nathani, Judge.

Appearances:

Mrs. Patil, A.G.P. for first party
Shri S.S. Jape, Advocate for second party

AWARD

(27-7-2004)

This is a reference sent to this Court for adjudication by the Govt. of India under Sec. 10 of the Industrial Disputes Act, 1947 on the demand of the second party.

2. The second party's claim in short is as under :

Second party is engaged with the first party as Sr. Hindi Translator and doing the work of translation from Hindi to English and vice versa. His total salary is Rs. 13000/- in the pay scale of Rs. 5000-150-8000. The first party is fully owned Government concern and engaging in printing of stamps security and other financial documents. About 6000 employees have been engaged by the first party to perform the printing in shifts continuously throughout the year. The second party is a workman discharging the work of clerical nature. He has to do over time continuously. All other workers are paid double over time as prescribed by law but the second party though works on overtime, the wages of overtime are not paid as per the provisions of law. He therefore approached the first party and requested to grant double over time, but his request was refused. He therefore approached the Assistant Commissioner of Labour. The Assistant Commissioner of Labour opined that the second party being a workman as described under the Factories Act and under the provisions of the Industrial Disputes Act, he is entitled for double overtime. The first party however refused to pay overtime at double rate to the second party. The first party is required to pay overtime from October 1987 to September, 1997 to the second party to the tune of Rs. 1,09,959/-. The first party be directed to pay the over time at double rate and Rs. 5000/- as costs.

3. The first party filed written statement at Ex. C-5 and submitted the following defence ;

Claim of the second party is for the period as long back 1987. He has come for the relief after 12 years. He failed to explain any justifiable reason for such inordinate delay on his part. Basic pay of the second party as on 30-6-87 was Rs. 1650/- and in April 2000 it was Rs. 6950/-, therefore, he cannot be termed as industrial worker. He holds the position of Translator and the service rendered by him is such that it has no relevancy with the factory or no concerned with the manufacturing process as defined in section 2(k) of the Factories Act. He is, therefore, not covered under section 59 for the payment of overtime allowance at double the ordinary rate. The duties of the second party are of supervisory in nature. He, is therefore, not a workman. He gets salary and not wages. The Assistant Commissioner of Labour, Pune had asked to settle the issue and not recorded his final opinion in the matter. The second party being not a workman within the meaning of section 2(1) of the Factories Act, he is not entitled for overtime at double rate. The first party submitted that reference be dismissed.

4. My Ld. predecessor framed the following issues :-
1. Whether the management proves that the concerned workman is not a 'workman' as defined in the I.D. Act?
 2. Whether the action of the management in not paying double the ordinary rate of wages for over-time to the concerned workman for working for more than 9 hours in a day or more than 48 hours in a week is legal and justified? If not to what relief the said workman is entitled to?
 - What award?
5. My findings to the above issues are as under :-
1. No.
 2. Yes.
 3. As per final award.

REASONS

As to Issue No. 1.

6. In order to establish the case, the second party examined himself at Ex. U-4 and first party examined its employee Ramchandra Narsinhamoorti Bhagoli at Ex. C-8. The second party produced and proved list of functions issued by Chief Accountant of first party at Ex. U-7, a copy of notice of first party issued on 18-6-1994 for exemption from the provisions of Factories Act at Ex. U-8, certificate issued by Assistant Director, official language of the first party for certifying duties of second party at Ex. U-9. The first party produced and proved copy of application of employee Nikumbha at Ex. C-10.

7. The second party testified that he was working as Sr. Hindi Translator with the First Party. His duties were to translate Hindi matter into English and vice versa. The first party's witness Ramchandra has stated that the duties of second party were as mentioned in Ex. C-9, the list of duties attached to the written statement. According to him, the second party was allotted with the duties of supervision of staff employed in implementation of official language policy and rules made thereunder in functional capacity. He has stated that the leave applications of the staff members were recommended by the second party. Thus, according to the first party's witness Ramchandra, the second party was not a workman as he was engaged in the supervisory duties.

8. As per Section 2(s) of the Industrial Disputes Act, 1947, the person who is employed mainly in managerial or

administrative capacity and a person employed in a supervisory capacity draws wages exceeding Rs. 1600/- p.m. is not workman. In such circumstances, it is necessary to see the duties discharged by the second party. The second party was designated as Hindi Translator. His main work was thus to translate Hindi in English and vice versa. his main duties obviously are of translating the document of whatsoever kind it may be. So as to supervision over staff is concerned, the certificate issued by immediate superior of second party Ex. U-9 does not show discharging of such supervisory duties by the second party. The first party disputed the document contending that S.V. Murhekar, Assistant Director, Official Language had no authority to issue such certificate. The first party's witness Ramchandra has admitted that S.V. Murhekar was the immediate superior of the second party. Thus, the said Murhekar can be said well aware of the duties discharged by the second party. As to authority to issue such certificate is concerned, it being not issue at hand, need not be looked into. The material is the duties discharged by the second party. The first party did not dispute the document Ex. U-9 alleging it false or fabricated. It has also not been denied that false duties are incorporated in the certificate. In such circumstances, what is mentioned in Ex. U-9 are to be taken as duties discharged by the second party. The duties mentioned in Ex. U-9 are not of supervisory nature. Thus, it can be very well said that the second party was not discharging supervisory duties.

9. The first party has produced copies of leave applications below list of document Ex. C-7. The second party's signatures are just for forwarding leave applications and not for granting leave. Leave has been granted by Assistant Director. Thus, these applications are not sufficient to show that the second party had right to sanction leave. The person who has no right of sanctioning the leave cannot be said in supervisory category. Admittedly the second party had no right to take disciplinary action against the employees, sanctioning the leave, to deal with financial transactions like grant of increase and others. First Party's witness Ramchandra also admitted that, the second party had no power of staffing. Thus, it can be well said that the second party was not possessing supervisory category. In such circumstances, though his payment is above Rs. 1600/- p.m. he is a workman in view of Section 2(s) of the Industrial Disputes Act, 1947. The issue No. 1 is therefore, answered in the affirmative.

10. As to issue No. 2 :

Section 59 of the Factories Act, 1948 being material to decide this issue, I reproduce it which is as under Extra wages for overtime :—

Where a worker works in a factory for more than nine hours in any day or for more than forty eight

hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.

Here in this case, it is not disputed that the first party is factory and the provisions of the Factories Act are applicable to the first party. It is also not disputed that the workers of first party are to be paid over time at double rate as mentioned in section 59 of the Factories Act. The only crux is whether the second party is a worker for applicability of section 59 of the Factories Act. The term worker has been defined in Section 2(1) of the Factories Act which runs as under :

“Worker” means a person [employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer. Whether for remuneration or not] in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process, (but does not include any member of the armed forces of the Union.”)

The second party contends that he was engaged in the work incidental to manufacturing process and thereby he is a workman within the meaning of section 2(1) of the Factories Act. The first party in its written arguments specifically contends that the work of second party of translation is not having any co-relation with manufacturing activities. As I mentioned in the above going para, the work of second party was purely of translation from Hindi to English and vice versa. Manufacturing process has been defined in section 2(k) of the Factories Act, which runs as under :-

“Manufacturing process” means any process for-

- (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or
- (ii) pumping oil, water, sewage, or any other substance, or
- (iii) generating, transforming or transmitting power, or
- (iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process of bookbinding; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

(vi) preserving or storing any articles in cold storage.

Admittedly the second party was not engaged in making, altering, repairing or any other process as defined above. He was engaged in translating Hindi into English and vice versa. His work was thus of purely of table work and can be said of clerical nature. Thus, his work cannot be said incidental to or connected with the manufacturing process. He is thus not a worker within the meaning of section 2 (1) of the Factories Act. In such circumstances, though he is a workman within the meaning of section 2(s) of the Industrial Disputes Act, 1947, he is not a workman within the meaning of section 2 (1) of the Factories Act. Therefore, section 59 of the Factories Act will not be applicable to him. He is therefore, not entitled to get double over time as claimed. The Id. counsel for the second party vehemently argued that the reference has made by the Govt. of India only to decide whether the action of management in not paying double the ordinary rate of wages for over time to the second party is legal and justified. He has submitted that the Labour Commissioner has referred the matter just for calculation by holding that the second party is a workman. It is significant to note that the Labour Commissioner can refer the matter for adjudication to the Labour Court or Tribunal, if no settlement takes place. Such reference under section 10 of the Industrial Disputes Act cannot be said with some finding on the matter in issue. The present reference is under section 10 of the I.D. Act. The appropriate Government on coming to opinion that industrial dispute exists, referred the matter to this Court. Such reference is for the entire dispute between the parties and not for of the dispute by deciding its part. The main dispute between the parties is whether the second party is a workman in view of section 2 (1) of the Factories Act. There was also dispute whether the second party was a workman within the meaning of section 2(s) of the Industrial Disputes Act. In such circumstances, contentions raised on behalf of the second party that the matter is referred just for calculation and recovery process holds no water.

11. The second party is not a workman within the meaning of Factories Act, therefore, section 59 of the Factories Act is not applicable to him. Consequently, he is not entitled for the payment of double the ordinary rate of over time wages. The action of first party in not paying the double the ordinary rate of over time wages to the second party is thus legal and justified.

12. The Id. counsel for second party during the course of his arguments submitted that the first party is paying

double overtime to Jr. Hindi Translators. Therefore, the second party who is Sr. Hindi Translator be also granted with such relief. It is significant to note that there is no document before me to show the same. The witness for the first party Ramchandra was also not asked about such discrimination. In such circumstances, the contentions raised by the second party cannot be accepted.

13. As I mentioned earlier, the second party is not entitled for double overtime, as he is not a workman in view of the provisions of the Factories Act, it is needless to say that his claim cannot be allowed. I, therefore, answer issue No. 2 in the negative.

14. The second party has not proved the claim Therefore, reference deserves to be rejected. Hence, I proceed to pass following order.

ORDER

The reference is rejected.

No order as to costs.

Nashik

Dated: 27-7-2004. Smt. C.A. NATHANI, Presiding Officer

नई दिल्ली, 19 अगस्त, 2004

का. आ. 2326. — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देहरादून पावर हाउस एण्ड टी.एल.एस.सी. डिवीजन के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय चण्डीगढ़ के पंचाट (संदर्भ संख्या 171/90) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-8-2004 को प्राप्त हुआ था।

[सं० एल-42012/21/90-आईआर (डी यू)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 19th August, 2004

S.O. 2326.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 171/90) of the Central Government Industrial Tribunal/Labour Court, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Dehar Power House & T.L.S.C. Division and their workmen, which was received by the Central Government on 19-8-2004.

[No. L-42012/21/90-IR (DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, CHANDIGARH

Presiding Officer : Shri Kuldip Singh

Case No. I.D. 171/90.

Received on : 13-11-90

Decided on : 2-8-2004

Kishan Chand C/o General Secretary,
Nangal Bhakra Mazdoor Sangh,
Nangal Township,
District. Ropar (Punjab).

.....Applicant

VERSUS

I. Executive Engineer,
DPH & TLSE Division,
BCB (power wing),
Slapper, District Mandi (HP)

.....Respondent

APPEARANCES

For the workman : Shri R.K. Singh

For the management : Ms. Neeru Chadha.

AWARD

Exercising the powers conferred U/S 10 of the Industrial Disputes Act 1947 (hereinafter referred to as the Act), the Central Govt. vide No. L-42012/21/90-IR (DU) dated 9th of November, 1990 has referred the following dispute to this Tribunal for adjudication :—

“Whether the action of the management of Executive Engineer, Dehar Power house & T.L.S.C. BCB (PW), Division, Slapper in terminating the services of Shri Kishan Chand son of Shri Rajha, Chowkidar at Dehar Power House, Slapper w.e.f. 30-11-1987 is legal and justified? If not, to what relief the concerned workman is entitled and from what date?”

2. After the appearance of the parties, the petitioner filed the claim statement on 18-4-1991 to which the respondent filed written statement on 5-9-1991. The petitioner filed his affidavit on 16-12-1992 and supported his claim made in the claim statement. He also filed some documents along therewith. The respondent rebutted the claim of the petitioner by filing the affidavit of R.C. Gupta SDO on 19-4-1994. they also placed on record the seniority list and other letters. In addition to this they also filed affidavit of M.K. Vasisht XEN.

3. The claim of the petitioner is that he was appointed as chowkidar by the respondent, Beas Construction Board

w.e.f. 22-2-1973 as work charged and he served there till 30-11-1987 when his services were terminated without following the procedure laid down under the Act; that respondent have not maintained any seniority list nor they published any and thereby they violated the provisions of Section 25-G read with rule of the Act; that the respondent retained the juniors in service whereas they terminated the services of the seniors; that respondent terminated the service of the petitioner by following the policy of 'hire and fire' in violation of section 25-F(a) of the Act; that the management further violated the law by not paying retrenchment compensation. It is further alleged that the respondent recruited new hands without providing chance to the petitioner for re-employment in terms of section 25H of the Act; that the work, which the workman was doing is still continuing whereas the services of the petitioner were terminated arbitrarily; that the respondent follow unfair labour practice by adopting the method of pick and choose, favouritism and nepotism. For these reasons the termination of the petitioner is illegal, void and bad in law, therefore, he is entitled to reinstatement with full back wages besides cost and damages.

4. The respondent has opposed the claim of the petitioner stating that the petition is not maintainable since the petitioner has already accepted the retrenchment benefits as admissible under the Act. On merits it is their case that the petitioner was appointed on 22-2-1973 as T. Mate and then was taken as chowkidar w.e.f. 1-3-1974 in work charge capacity on which he continued to serve till 30-11-1987. The Petitioner alongwith five others was retrenched from service on 30-11-1987 in terms of Section 25 FFF of the Act since the work in which they were appointed had partially been completed. That earlier the seniority used to be maintained at sub-division level, as per instructions dated 7-2-1982 and it was only w.e.f. 27-1-1989 the seniority was ordered to be maintained at divisional level prospectively. They claimed that the respondent had maintained the seniority list in which the petitioner figured at No. 20 and the same was properly pasted on the notice board besides the same had been circulated to all the concerned workers. It is further pleaded that chowkidars from serial No. 13 to 20 were retrenched from service w.e.f. 30-11-1987 since they had become surplus. No junior to these chowkidar was retained. That BCB being a shrinking organization closed partially on completion of work. The petitioner was paid salary in lieu of one month notice and the retrenchment of the petitioner is in accordance with the Act and rules; that the petitioner had been paid all the retrenchment benefits and any claim of the petitioner contrary to that is wrong. It is wrong on the part of the petitioner to claim that fresh appointment of chowkidars has been done. More over the remaining work of the BCB has been handed over to the Bhakra Beas Management Board. They have prayed for rejection of the reference being devoid of any merit.

5. The petitioner in his affidavit reiterated the facts stated by him in the claim petition. He was cross-examined by the management wherein he stated that all the facts stated by him in his affidavit Ex. W1 are correct. In cross-examination, by the management, he admitted that at the time of his retrenchment he had received money as is shown in Ex.M1, M2, M3 and M4 and has admitted his signatures thereon. He also admitted the correctness of the voucher Ex.M5 by which he had been paid the salary for the month of November 1987. He also admitted to have received leave encashment by Ex.M6. Strangely he admitted that he had received notice Ex.M7 besides that alongwith him other chowkidars were also retrenched on 30-11-1987 since the work in the store and Transport Sub Division had been completed. He alleged that many person had been employed in the Bhakra Beas Management Board whereas he has not offered re-employment. He also did not agree with the suggestion that the names of the persons given by him in the affidavit had not worked with him and that all the employees who were recruited after 1-12-1972 had been retrenched. He admitted that Ram Ditta belongs to reserved category and stated that he too belongs to reserved category. He failed to state whether after his retrenchment any body was recruited in the Store and Transport Sub Division Nangal.

6. On their turn the respondent produced M/s. R.C. Gupta and M.K. Vasishth as their witnesses for examination and cross-examination by the petitioner. The parties have also placed on record photocopies of some letters besides the documents they are relying upon.

7. The reference made by the Govt. of India is to find out as to whether the action of the management of Executive Engineer, Dehar Power House and TLSC BCB(PW) Division Slapper in terminating the services of Kishan Chand at Dehar Power House Slapper w.e.f. 30-11-1987 was legal and justified or not. The petitioner through his statement of claim has further magnified his claim stating that he was appointed as chowkidar w.e.f. 22-2-1973 and worked on the post in BCB where he continuously worked till 30-11-1987 when his services were terminated on 30-11-1987 without following the procedure laid down under the Act alleging that the department has not maintained any seniority list nor pasted the same on notice board. The petitioner has further claimed that he had been terminated from service by pick and choose method as some persons juniors to him were retained whereas he has been shown the door. He was also not given one month notice nor was paid any retrenchment compensation. He was also not given the benefit of re-employment in terms of Section 25H of the Act whereas the respondent has engaged a lot many persons who were new hands, and that the work against which he had been appointed is continuing and thus his termination was bad in law. He has prayed for his

reinstatement on the post from which he was terminated with full back wages and other benefits including the cost of the proceedings.

8. If we look at his statement, we found that the petitioner has not supported his own statement of claim at the time he appeared as witness in the case. He proved his affidavit filed by him Ex. W1 but when cross-examined by the management he admitted that at the time of his retrenchment, he had received some money. He proved documents Ex. M1 to M6 & M7 which are receipts tendered by the respondent. He Admitted that he had received retrenchment compensation, gratuity amounting to rupees 7503.75, rupees 1017.30 on account of pay in lieu of notice. He also admitted that he had received salary for the month of Nov. 1987, and that he had received notice Ex. M7. He further admitted that other chowkidars were also retrenched along with him on 30-11-1987 who were posted in Store and Transport Sub Division, on the completion of work. He alleged that many persons were employed by the BBMB, but he was not offered re-employment. He denied the suggestion that employees shown to be working with him in his affidavit were in fact were not working with him and all the employees recruited after December 1972 were retrenched. He further showed his lack of knowledge whether any person was employed in S & T Sub Division at Nagal after his retrenchment or not. Thus from the statement of the petitioner, it comes out that before termination of his services he was given notice, salary and was also paid his dues like salary for the month of November 1987, amount of gratuity besides retrenchment compensation. The petitioner has not claimed any other amount to him from the respondent regards the following of the procedure laid down by Section 25 F of the Act is concerned, he admitted that all the requirement were done by the management before terminating his services. The only grievance of the petitioner left to be considered is whether the management had violated the provisions of Section 25H of the Act in not providing opportunity to the petitioner after his retrenchment, at the time, they had recruited persons on the posts similar to that occupied by the petitioner before his retrenchment. It is recollected that the petitioner in his statement admitted that he can not state whether after his retrenchment any person was employed in the S&T Sub Divn. Nagal, where, admittedly, he had worked as chowkidar. His own statement is clear that to his knowledge no body was recruited in S&T Sub Divn. Nagal. He has also failed to produce any evidence to show which person had been recruited after his retrenchment who was junior to him in service and who was recruited as a fresh ignoring his claim in terms of Section 25H of the Act. In the affidavit, tendered by him he named of Nand Lal, Ram Ditta and Chuni Lal, as the chowkidars, who were junior to him and were according to him, regularised in service by the Bhakra Beas

Management Board, ignoring his claim. The respondents have placed on record, a seniority list of the S&T Sub Division issued on 27-11-1987, naming 20 persons who were working with DPH, TLSC Divn. BCB (PW) Slapper. According to this document all these persons named by the petitioner in his affidavit are shown to be senior to the petitioner who has been shown on the last number of the list. According to this list, the petitioner had joined service, of BCB on 20-10-1973 where as the petitioner in his statement claimed that he had joined the service on 22-2-1973. If we take the claim of the petitioner as correct about his joining of service then also Nand Lal, joined the service with the BCB earlier to the petitioner i.e., on 21-12-1972. As regard the other two persons, Chuni Lal and Ram Ditta, the petitioner has not produced evidence to show that they were recruited later than the petitioner, whereas the respondent management has placed on record the seniority list. When R. C. Gupta and M. K. Vasishth, management's witnesses came to stand the cross-examination of the petitioner, the petitioner did not put any specific question with regard to these two persons as to when they had joined service and whether they were junior to the petitioner or not. The petitioner put a general question whether juniors to the petitioner were still working in the same division, to which the management's witness M.K. Vasishth denied. To the other witness, the petitioner did not put any question in this regard. The petitioner has failed to prove that two above named persons were recruited who were junior to him and the respondent ignored his claim.

9. There is another reason to come this conclusion. It is admitted that BCB was a different organization and BBMB was different organization, though later on the management of BCB was taken over by the BBMB much later than when the petitioner had already been retrenched from the services of the BCB.

10. Representative of the petitioner has laid much stress upon his claim that since the petitioner was an employee of BCB which merged with the BBMB, therefore, he automatically become employee of the BBMB, thus getting a right to be considered for re-employment. Further he claimed that the seniority list, of the chowkidars alleged to be prepared by the respondent can not be considered since the same has been prepared on sub divisional level whereas common employer of the petitioner and other co-workers was the Chief Engineer of BCB, hence the seniority should have been combined one and in that event, the Petitioner was senior to many who have been retained in service, whereas the petitioner has been retrenched.

11. I have considered this submission and am not in agreement with what is stated by the representative of the petitioner. Earlier the seniority of the workers was maintained at circle level but later on it was prepared on the division level and subsequently the seniority was prepared

on the sub-division level and according to that seniority, the petitioner figured at the end of the seniority list. He has failed to show which of his junior in the particular category he was engaged and where from he was retrenched any of his junior was retained or the respondent engaged new workers without giving the opportunity to the petitioner for re-employment in terms of Section 25H of the Act. Moreover in all the agreements regarding the maintenance of the seniority list by the respondent, representatives of the union, which the petitioner was also a member, were party and maintenance of the seniority was also received recognition from the Hon'ble High Court of H.P., Punjab & Haryana. In this regard a reference can be made to the judgement delivered by the Division Bench of Punjab & Haryana High Court in the case of Raj Kumar Vs. BBMB, in CWP No. 1078 of 1994 decided on 2-12-1994. On this account also the petitioner has failed to prove his claim.

12. In view of what has been stated above, the reference made by the Govt. of India is replied in the terms that there was no illegality committed by the Executive Engineer, Dehar Power House & TLSC BCB (PW), Division, Slapper in terminating the services of Shri Kishan Chand son of Shri Rajha, Chowkidar at Dehar Power House, Slapper w.e.f. 30-11-1987. Award is passed accordingly. Central Govt. be informed.

Chandigarh

2-8-2004

KULDIP SINGH, Presiding Officer

नई दिल्ली, 24 अगस्त, 2004

का. अ. 2327.—औद्योगिक विवाद अधिनियम, 1947. (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक स्टाफ कॉलेज के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कम-लेबर कोर्ट II, नई दिल्ली के पंचाट (संदर्भ संख्या आई. डी. नं. 24/91) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-8-2004 को प्राप्त हुआ था।

[सं० एल-12011/1/1990-आईआर (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 24th August, 2004

S.O. 2327.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I. D. No. 24/91) of the Central Government Industrial Tribunal/Labour Court, II New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to

the management of State Bank Staff College and their workmen, which was received by the Central Government on 23-8-2004.

[No. L-12011/1/1990-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT II,

NEW DELHI

PRESIDING OFFICER, R. N. RAI

I.D. NO. 24/91

STATE BANK OF INDIA STAFF ASSOCIATION

Versus

STATE BANK STAFF COLLEGE, I.D.P.L. COMPLEX,
DUNDAHERA, GURGAON

AWARD

The Ministry of Labour by its letter No. L-12011/1/90/IR B-IH Central Government dt. 26-02-1991 has referred the following point for adjudication.

The point runs as hereunder :—

“Whether the action of the management of the State Bank Staff College, Gurgaon in paying different rate of CCA and HRA to two different categories i.e. supervisory and award Staff Nov., 1982 to April, 1990 was justified? If not, to what relief the workman are entitled to?”

The General Secretary, State Bank of India Staff Association has filed statement of claim on behalf of the workman. It has been stated in the claim that the SBI established College for the training of its officers in November, 1982. The college is located at IDPL Complex which is about 8 Kms from the New Delhi Airport on the Gurgaon Road and it is about 1 KM from New Delhi-Gurgaon border in the Village Dundaheera.

That since the opening of the college, supervising staff employees of the bank have been paid HRA/CCA as per rates payable to the staff posted in Delhi whereas as large number of workmen staff members were not given the said facility. Staff members should also get HRA an CCA according to the supervisory staff. Those who are residing in Delhi are being paid HRA/CCA at Delhi rates and those who are residing at gurgaon are being paid HRA/CCA as

per B-Class centers. Representations were made for making payment to the staff but the bank did not listen to the demands of the members of the staff. It has been stated that this is an irregularity and the supervising staff as well as the staff members should be given HRA and CCA at one rate. Discrimination should not be made. It has also been stated that the dispute does not subsist at present.

The management has filed written statement. Many staff members were not willing to go from Delhi to Gurgaon so it was decided that those the staff members who went from Delhi to the College should be paid HRA/CCA as admissible to the "A" class city and those members of the staff coming from Gurgaon should be paid as admissible to "B" class city. This practice, however, when found to be erroneous was withdrawn in March, 1990. All the staff members working at the college, both supervisory and award staff, are getting CCA/HRA as admissible to "B" class city. It would thus be observed that there is no discrimination between any kind of staff with regard to the payment of CCA/HRA.

Rejoinder has been filed from the side of the Staff Association and the same matter has been reiterated in the rejoinder.

Heard arguments from both the sides and perused the papers on the record. It was submitted from the side of the Staff Association that the staff members should also get CCA & HRA equivalent to the supervising staff. At present, the members of the staff as well as supervising staff are getting the same amount of CCA & HRA so at present there is no dispute. The inconsistency regarding the payment of HRA and CCA was corrected in March, 1990, and thereafter, all the employees of the said college are getting equal CCA/HRA and hence the question of giving HRA and CCA to staff members does not arise. It is on the discretion of the bank to recover or not to recover the extra HRA and CCA giving to the supervising staff. The Bank in its discretion gave CCA and HRA according to class A city as the supervising staff was residing in Delhi so that practice was not bad. So long as they were residing in Delhi, they were entitled to get HRA and CCA in the city in which they resided. The staff members always resided in Gurgaon so there is no question of giving them HRA and CCA at Class A city rate. There is no force in the argument of the staff employees. At present, there is no dispute of HRA and CCA. As such, the point referred to has become infructuous. At present, there is only one rate of HRA and CCA. As such, there is no merit in the reference as the dispute is not subsisting at present.

The reference is replied thus:—

The action of the management of State Bank Staff College, Gurgaon is paying different rate of CCA and HRA

to two different categories i.e. supervisory and award staff from Nov. 1982 to April, 1990 was justified. The workmen are not entitled to get any relief.

The award is given accordingly.

3-8-2004

R.N. RAI, Presiding Officer

नई दिल्ली, 24 अगस्त, 2004

का. आ. 2328.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार किसान ग्रामीण बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कम-लेबर कोर्ट II, नई दिल्ली के पंचाट (संदर्भ संख्या आई. डी. नं. 92/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-8-2004 को प्राप्त हुआ था।

[सं० एल-12012/155/94-आईआर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th August, 2004

S.O. 2328.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award (I. D. No. 92/95) of the Central Government Industrial Tribunal/Labour Court, II New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Kisan Gramin Bank and their workmen, which was received by the Central Government on 23-8-2004.

[No. L-12012/155/94-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER : CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR-COURT-II NEW DELHI

PRESIDING OFFICER, R. N. RAI

I.D. NO. 92/95

BHUREY KHAN

VERUS

THE MANAGEMENT OF KISAN GRAMIN BANK

AWARD

The Ministry of Labour by its letter No. L/12012/155/94/IR B-I, Central Government dt. 27-10-1995 has referred the following point for adjudication.

The point runs as hereunder:—

“Whether the action of the management of Kissan Gramin Bank, Budaun in terminating the services of Shri Bhurey Khan, son of Shri Ali Mohammad, daily wager w.e.f. 30-09-1993 is just and legal? If not, to what relief the workman is entitled.”

The claimant has filed statement of claim. In his statement of claim, he has stated that he was appointed as Messenger on 7-7-86 and he worked from 7-7-1986 to 15-7-86 and he got payments. Thereafter, he worked from 16-7-86 to 12-02-1988 and got the payments and he worked from 13-1-1988 to 8-02-1988 as a messenger and lastly from 13-4-1988 to 28-04-1989, he worked as Messenger in the bank. It has been further stated that he had filed certificate regarding his service from 13-4-1988 to 28-04-1989. In this way, he has put in total service of 979 days and he was worked as a temporary part-time daily wager in the Kissan Gramin Bank, Budayun Branch and the Manager of the same bank has given him certificate regarding his work so section 25-F of the ID act is attracted. His services cannot be terminated without giving him notice and payment of retrenchment.

The bank has filed written statement and it has been stated in the written statement that the competent authority, the Chariman did not appoint him. He has been made payment as a Safai Karmchhari of Rs. 70 for the work on different dates and the certificate issued by the Branch Manager is not correct. He was a part-time and daily wager as has been admitted by him in the statement of claim and he has received payment of daily wager regarding his work for the dates on which he worked as part-time daily wager messenger. He was assigned work from time to time for cleaning and sending some messages and he was made payment for every period of his work. He never worked for 240 days in any calendar year and he has not filed any record to substantiate his statement of claim. In his statement of claim, he has admitted that he was appointed as a messenger part-time daily wager so according to his statement of claim, he was a daily wager and he was not a full time employee.

The workman has filed rejoinder and in his rejoinder, he has reiterated the averments of his statement of claim and he has said that there was employee and employer relationship between the workman applicant and the bank and he was a full time worker of the bank.

Heard arguments from both the sides and perused the paper on the record. It was submitted from the side of the management that he was a temporary employee of the bank and he has served for 240 days in 12 calendar months.

The burden is on the workman to establish that he has worked for 240 days. The bank has filed the statement of payments made to him and it is clear from the list of the payments that he has been paid for the days he worked. No monthly payment has been made to him. The workman applicant has not filed any paper to establish the fact that he was made payment on monthly basis. He has not admitted the photocopies of the statement of payment filed by the bank but he himself has filed no paper to prove that he got payment monthly. He has filed certificate but the certificate appears to be tampered. There is cutting on the dates of the certificate and the certificate appears to be forged one. It was his duty to prove that he has worked for 240 days.

My attention was drawn to letter dt 15-6-89. From this letter, it appears that this letter is for full time messengers and not for part-time messengers. Photocopies have been filed in evidence from both the sides and the witnesses have been cross-examined. It was stated from the side of the workman that in cross-examination, Shri M.K. Saxena, MW/4 has stated that he made the payments monthly and maintained monthly accounts for payment and they maintained only oral account regarding the working days of the workman. He has further said that the certificate marked “X” was issued on 28-4-1989 for the period from 24-4-1989 to 28-04-1989 but at the place of 89, 88 has been written by tampering it so the certificate which the workman has produced appears to be tampered. He has made 88 at the place of 89 to make the period of working for 12 calendar months. That tampered certificate cannot be relied upon and there is no other evidence to prove that he worked for more than 240 days. In the circumstances, the workman applicant has not established his case of working for 240 days in a calendar year as such 25-F of ID Act 1947 is not attracted. It appears from the certificate dt. 28-04-1988 that 89 has been written after removing 8 but in the body of the certificate, it has been specifically mentioned that he started working from 13-4-1988 so he has tampered 13 as well as 88. In the duplicate certificate also, there is tampering and the witness has stated that he has not issued any duplicate certificate. As such, the workman has absolutely failed to establish that he worked for 240 days in a calendar year. He was a part time messenger and he has not performed 240 days work in 12 calendar months so his prayer is liable to be rejected.

The reference is replied thus:—

The action of the management of Kissan Gramin Bank, Budaun in terminating the services of Shri Bhurey Khan, S/o of Shri Ali Mohammad, daily wager w.e.f. 30-09-1993 is just and legal and the workman applicant is not entitled to any relief as prayed for.

The award is given accordingly.

R. N. RAI, Presiding Officer

नई दिल्ली, 24 अगस्त, 2004

का.आ. 2329.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नार्थ ईस्टर्न रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-कम-लेबर कोर्ट, कानपुर के पंचाट (संदर्भ संख्या आई. डी. नं. 95/1997 को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-8-2004 को प्राप्त हुआ था।

[सं० एल-41011/1/1996-आई आर (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 24th August, 2004

S.O. 2329.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID No. 95/1997) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of North Eastern Railway and their workmen, which was received by the Central Government on 23-8-2004.

[No. L-41011/1/1996-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SRI SURESH CHANDRA, PRESIDING
OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR-
COURT KANPUR, U.P.

Industrial Dispute No. 95 of 1997

In the matter of dispute between :—

Sri Rajender Shahi son of Sri Srinath Buksha Shahi
Village Baharaulia Post Belipar, District. Gorakhpur

AND

The General Manager,
North Eastern Railway
Gorakhpur.

AWARD

1. Central Government, Ministry of Labour, vide notification No. L-41011/1/96/I.R.B-I dated 30-6-97 has referred the following dispute for adjudication to this Tribunal—

Whether the action of the management of North Eastern Railway in terminating the services of the workmen S/Sri Rajendra Shahi and 18 others (list annexured) and also the action of the management

in not taking the payment to the workmen are legal and just? If not, to what relief the workmen are entitled?

2. At the out set it may be stated that the reference order has not properly been worked whereas it shows that the action of the management in not taking the payment to the workmen are legal and just. Instead of it the reference order should be read as the action of the management in not making the payment to the workmen are legal and just.

3. The case of the workmen as set up by them in the statement of claim in short is that they were in the employment of the management for years together and were working against the vacant post. The work against which these workers were deployed was of permanent natures and the details such as date of engagement, date from which they were paid regularly were detailed in the chart annexed with the statement of claim (a photocopy of the same is also being attached with the award which shall form part of the award). It has been alleged that the concerned workmen had worked continuously for more than 120 days in each year and according to the railway rules a worker who is found to have worked for more than 120 days of continue service is entitled to become temporary railway employee and the railway is obliged to provide him work regularly under the railway rules. It is further alleged that the concerned workmen in the initial years of their engagement had completed 120 days of continuous work in this way they were working for more than 120 days of continuous work almost in each years. These workers were also issued casual labour service cards. It has further been alleged by the workers that they have attained temporary status in the services of the management and they were being paid full wages from the dates shown against their name in the annexure attached with the award. It is also alleged that earlier these workers were used to be paid their wages on daily rated basis but on the intervention of the labour authorities these workers were provided temporary status in the services of the management and the management started making them full wages and also paid arrears of wages to these workers. The case of the workers involved in the case is also that the services of these workers were dispensed with by the management w.e.f. 16-10-93 and the management stopped providing them employment and thus the dispensation of the services of the workers is highly illegal and against the principles of natural justice. The concerned workmen approached the Labour Enforcement Officer (Central), Gorakhpur against the illegal dispensation of their services by the management and after intervention in the matter the management was forced to provide these workers time scale on this score out of vengeance the management became vindictive and bias and by way of adopting unfair labour practice the management dispensed with the services of these workers.

It has further been alleged that having regard to the long services of these workers with the management they were entitled to become regular employee of the management and this purposes the workers involved in the case were medically examined by the department/management. Management also completed other formalities for providing these workers regular status in the services of the management. Instead of regularising the services of these workers the management stopped providing work to the concerned workman w.e.f. 16-10-93 which is illegal and is also against the principles of natural justice. It has further been stated by the workers that at the time of dispensation of their services by the management of Railway several junior persons were retained in the services of the management and some of them are by the name of Sri Ram Chander, Hari, Rudal, Raghbir and Vishwanath who are regularised in the services of the management soon after they completed 120 days of continuous services and they are still under the employment of the management but the concerned workman being senior to the above named person were not regularised in the services of the management, instead their services were illegally terminated by the management. The concerned workman have further alleged that after the termination of their services management engaged in the services of the railway several fresh hands but these workers have not been provided with any opportunity of reemployment. It has also been alleged that the management of railway have breached the provisions of sections 25F, 25G and 25H of the I.D. Act, 1947, in as much as the management of railway disengaged the senior persons from the employment while they retained the services of the junior persons, management had not maintained any seniority list and that the management did not afford any opportunity of reemployment while inducting fresh hands in the services of the railway. On the basis of above allegations the workers have prayed that their disengagement/termination of service is illegal and unjust and they are entitled to be reinstated in the services of the railway with all back wages, continuity of services and also are entitled for all consequential benefits.

4. The management contested the claim of the workers and filed their reply denying the entire case of the workers as set up by them in the statement of claim. It has been alleged by the management that no cause of action has ever accrued to the workers and the workers involved in the case are not entitled to any relief. The management in their additional plea has alleged that the claim of the worker is time barred vague, incorrect and is incorrect and not clear. It has been alleged by the management that the concerned workers were engaged for the work of flood during the period of rainy season as

a emergency labour for specific period and purpose. The management has denied having worked for more than 120 days of continuous work by these concerned workmen. It is the further case of the management that some of the workers have worked for more than 120 days but not continuously and according to law the persons who had worked continuously for more than 120 days have obtained temporary status and employees who obtained temporary status are engaged in order of their seniority. It has been also alleged that whenever the management was under requirement of work only those employees who had conferred with temporary status were being deployed on work available with the management in comparison with others. It has been alleged by the management that due to seizure of work of machine/operators in Steam Loco by way of diesel the regular employee become surplus and under such surcumstances on availability of work the surplus employees were given preference in the matter of employment over the persons who obtained temporary status under the railway management. The management has also detailed some formalities in their reply regarding proceedure of giving temporary status and it has been denied by the management that a temporary status employee is entitled to become regular employee of the management unless he had undergone through selection process. The management further alleges that on availability of vacancies the same are notified and on the basis of seniority of employees they are called for medical and screening test and subsequently who are found fit in such examinations are provided with regular employment under the management. Management stated that the workers were appointed for fix period for emergency work and when the period of work expired they stood automatically terminated. It is also denied by the management that any person junior to these workers were engaged by them. The railway management has not passed any orders for employment and permanent for those emergency labour who are not working with the management. The management further stated that the claim of the workers is based on incorrect facts and the concerned workmen involved in the case are not entitled to claim any relief and the claim of the workers is liable to be dismissed.

5. Rejoinder has been filed by the workers but nothing new has been alleged therein except reiterating the facts as alleged by them in their statement of claim.

6. In support of respective case of the parties, the parties have filed documentry as well as oral evidence in the case. Whereas Sri Phoya Nath Tiwari has been examined as W.W. 1 in support of the claim set up by the workmen who also gave evidence in support of his co-workers involved in the present case, management has examined Sri Murari Lal Sharma as M.W. 1 who is posted as Head Clerk under the management.

7. The workman with the support of witness Phoyanath Tiwari, W.W. 1, has stated that he and 18 others worked with the railway department and that their services were disengaged with effect from 16-10-93. It has further been stated by this witness that on representation the workmen were awarded the temporary status by the railway department from 14-10-85 and that even the arrears of wages on account of having been given temporary status was paid to the workmen and that workers had worked for more than 120 days and thereafter they are entitled for their reinstatement and that the action of the management in determining the services of workers is neither justified nor legal. It is also the statement of the witness that few of the workmen have not been paid for the work done by them which is also neither fair nor legal.

8. The management in a routine manner has denied the contention of the management in toto. The management examined Sri Murari Lal Jaiswal, the head clerk of AEN (East) NER Gorakhpur as M.W. 1. This witness has stated in detail the procedure of granting the temporary status to the daily wagers. He has categorically admitted that out of the 19 workers 12 workers were granted time scale and the remaining workers namely S/Sri Hari, Koyal, Mewatal, Ram Pratap Chaurasia, Dilip Kumar and Bhulai son of Sukhdeo have not been paid arrears of pay. This witness has also supported his contention on the basis of payment sheets photocopy of which has been filed on behalf the management which is Ext. M-2 on record. This witness has stated the details of the payment made to each of the workers excepting the above named six workers. It is stated by this witness that the above named six workers were not paid the arrears on account of some controversy or missing entries in their casual labour card. This witness in his cross examination admitted that these workers were given fresh engagement after their disengagement during the rainy season work and that the disengagement was done as there was appointment in surplus.

9. From the ocular as well as the documentary evidence relied on by the management it is evidently clear that the workmen in question had worked with the management and that on the basis of their continuous working/engagement, they were granted the temporary status and the management also paid arrears of wages. It is surprising to note that the management has not been able to explain as to why the arrears of payment for the work done by the workmen named above was not paid to them. It is the duty of the management to verify the working of each and every workman engaged by them and thereafter the workmen becomes entitled to get the wages for the work done even if it is found by the management that some clerical mistake occurs in the casual labour cards issued to these workmen by the management.

10. Be that as it may, it is quite established that these 19 workmen worked with the management and that six of them were not paid for the work done by them. The six workmen named by the management witness are therefore entitled for the arrears of pay to be paid by the management as claimed by them.

11. Neither of the workman has been above to prove that the same work was got done by the management from other workmen junior to them therefore it cannot be said that the management has violated the provisions of Section 25G of the Industrial Disputes Act, 1947.

12. Admittedly the management has not served with the notice of determination of service to either of the workman on any ground what so ever after conferring the temporary status. Therefore, the action of the management in determining the services of the workmen is unjust and unfair. The workmen are therefore entitled for their reinstatement. However, the workmen will not be entitled for any back wages from the date of their disengagement as it is not established that persons junior to workmen have been taken in job.

13. The workmen is therefore, entitled for their reinstatement and it is further held that the six persons named by the management witness in his evidence are entitled for arrears of pay which has admittedly been not paid to them by the management. The management may enquiry from their own record about work done by each of such workmen.

14. The result is that the action of the management of N.E.R. in terminating the services of the workmen is held to be unjustified and unfair. The further action of the management in not making payment to the workers is also held to be unjust and unfair. Accordingly all the workmen named in the annexure to this award are reinstated in service without back wages.

Reference is answered accordingly.

SURESH CHANDRA, Presiding Officer

ANNEXURE

Name		S/o
S/Shri		S/Shri
1.	Rajendra Shahi	Nath Bux Shahi.
2.	Rameshwar Pd.	Gaya Pd.
3.	Gaya	Sita
4.	Inderchand	Ramu
5.	Faya Nath Tewari	Bhagwat Tewari
6.	Bipin Kumar Sharma	Bharat Sharma
7.	Ram Govind Singh	Kulwant Singh

Name	S/o
S/Shri	S/Shri
8. Parisiddhan	Dharmdee
9. Radhey Shyam Yadav	Haribansh Yadav
10. Ram Kewal	Jagannath
11. Hari	Suchit
12. Kunthi	Bhikhari
13. Faujdar	Inder
14. Keil	Jaddu
15. Mewa lal	Bachchu
16. Ram Pd. Chaurasiya	Ramashray
17. Dilip Kumar	Chumman Lal
18. Gaya	Jhagaru
19. Vishwakarma	Bhagwant Sharma

नई दिल्ली, 24 अगस्त, 2004

का.आ. 2330.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दी बैंक ऑफ राजस्थान लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कम-लेबर कोर्ट, जयपुर के पंचाट (संदर्भ संख्या आई.डी. नं. 4/2004 को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-8-2004 को प्राप्त हुआ था।

[सं० एल-12012/270/2003-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th August, 2004

S.O. 2330.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I. D No. 4/2004) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Bank of Rajasthan Ltd. and their workman, which was received by the Central Government on 23-8-2004.

[No. L-12012/270/2003-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
JAIPUR

Case No. CGIT-4/2004.

Reference No. L-12012/270/2003-IR(B-I)

Sh. Ramesh Kumar,
S/o. Sh. Gauri Shankar Sharma,
Ward No. 4, Behind Durga Mandir,
Rawastar, Distt. Hanumangarh. . . . Applicant

Versus

The Regional General Manager,
The Bank of Rajasthan Ltd.,
Regional Office, Sadulganj,
Bikaner - 334001. . . . Non-applicant

PRESENT :

Presiding Officer: Sh. R.C. Sharma

For the applicant: None.

For the non-applicant: Sh. Alok Fatehpuria.

Date of award: 23-7-2004

AWARD

1. The Central Government in exercise of the powers referred under Clause D of Sub-section 1 & Sub-section 2(A) to Section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act') has referred the following industrial dispute to this Tribunal for adjudication, which runs as under:—

"Whether claimant Shri Ramesh Kumar S/o Gauri Shankar Sharma has worked in the Bank of Rajasthan Ltd. of Rawastar Branch from 1-12-2000 to 31-7-02 as a peon? If yes, whether his discontinuation from 31-7-2002 is legal and justified? if not, what relief Shri Ramesh Kumar is entitled to and from what date?"

2. The workman in his claim statement has pleaded that he was appointed by the non-applicant bank on 1-12-2000 to the post of Class 4 on daily wages, who continuously worked up to 31-7-2002. But on 31-7-2002, his service was terminated in violation of the provision under Section 25-F of the Act. His averments are that at the time of his termination the junior employees to him were retained in violation of the provision under Section 25-G of the Act and fresh hands were recruited after his termination in contravention of Section 25-H of the Act. He has requested for his reinstatement with consequential benefits.

3. In the written statement, the non-applicant has disputed his claim and has averred that the case does not fall within the definition of the industrial dispute, that the workman was never appointed by the bank and that no payment of wages was made by the bank to him. His averment is that the workman is not an employee of the non-applicant bank.

4. At the stage of filing the rejoinder neither, the workman himself nor his representative put in his appearance before the Court. It appears that the workman is not interested in further contesting his claim.

5. Accordingly, a "No Dispute Award" is passed in the matter.

6. Let a copy of the award may be sent to the Central Government for publication under Section 17(1) of the Act.

R. C. SHARMA, Presiding Officer

नई दिल्ली, 24 अगस्त, 2004

क्र.उ.प्र. 2331.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नोर्दन रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण का-लेबर कोर्ट, लखनऊ के पंचाट (संदर्भ संख्या आई. डी. नं. 29/2001) को प्रस्तुत करती है, जो केन्द्रीय सरकार को 23-8-2004 को प्राप्त हुआ था।

[सं० एल-41012/235/2000-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th August, 2004

S.O. 2331.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID No. 29/2001) of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Northern Railway and their workmen, which was received by the Central Government on 23-8-2004.

[No. L-41012/235/2000-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR-COURT LUCKNOW

PRESENT :

SHRIKANT SHUKLA, Presiding Officer

I.D. No. 29/2001

Ref. No. L-41012/235/2000/IR (B-I) dt. 8-2-01

BETWEEN :

Sri N. L. Pankaj,
General Secretary,
Rashtriya Mazdoor Congress (INTUC),
Kantlaja, Rambagh Colony,
Ramghat Road,
Aligarh (U.P.) 202002

AND

The Assistant Engineer (Track)
Northern Railway, Tundla,
The Divisional Engineer,
Northern Railway,
Hathras Junction, D.A.S. II,
Northern Railway,
Allahabad-211006

AWARD

Government of India, Ministry of Labour vide their order No. L-41012/235/2000/IR (B-I) dated 8-2-2001 has referred the following dispute for adjudication to Presiding Officer, CGIT-cum-Labour Court, Lucknow;

"Whether the action of the management of Assistant Engineer (Track) Northern Railway, Tundla Regarding Reversion of Sri Vasudev from Gateman to Gangman w.e.f. 15-11-99 is legal and justified. If not, relief the workman is entitled ?"

The General Secretary, Rashtriya Mazdoor Congress (INTUC) has filed statement of claim stating there in that worker Vasudev S/o Munshi Lal R/o Dharughari, Post Mahoo, District Hathras was employed under opposite party at Daud Khan Aligarh Rail Marg Gate No. 107C as permanent Gateman since 7-3-76. The General Secretary has alleged that the worker Vasudev Gateman was sick during 15-11-99 to 18-1-2000 and was on sick leave. It is further alleged that when he returned after sick leave on 19-1-2000 alongwith fitness certificate at Gate No. 107C, then the opposite party did not allow him to take charge of the said gate. Not only that the opposite party did not allow the worker to join the duty, the opposite party also withheld the salary since 19th July 2000 and in the circumstances the worker is entitled to join at Gate No. 107C and the salary there of.

The General Secretary has filed following documents (Photostate copies) in support of his case :

1. Rashtriya Mazdoor Congress (INTUC), Distt. Counsel Aligarh, photocopy of letter dt. 25-11-99.
2. Photocopy of Rashtriya Mazdoor Congress (INTUC), Distt. Aligarh, letter dated 18-1-2000.
3. Photocopy of Sr. Divn. Engineer (Rail Track) Northern Railway, Hathras Junction, letter dated 1-2-2000.
4. Asst. Engineer (Track), Northern Railway, Tundla, letter dated 2-2-2000.
5. Photocopy of Rashtriya Mazdoor Congress (INTUC), Distt. Counsel, Aligarh, letter dated 6-2-2000.

6. Photocopy of Vasudev Gangman, 107C, joining report dated 19-2-2000.
7. Photocopy of Vasudev Gateman 107C, joining report dated 19-2-2000.
8. Asst. Engineer (Track), Northern Railway, Tundla, letter dated 24-2-2000.
9. Photocopy of Rashtriya Mazdoor Congress (INTUC) Distt. Counsel, Aligarh, letter dated 5-3-2000.
10. Sr. Divn. Engineer (Rail Track) Northern Railway, Hathras, letter dated 5-3-2000.
11. Photocopy of Rashtriya Mazdoor Congress (INTUC) Distt. Counsel, Aligarh, letter dated 15-3-2000.
12. Photocopy of Asstt. Engineer (Track), Tundla Charge sheet, dated 22-3-2000.
13. Photocopy of Rashtriya Mazdoor Congress (INTUC) Distt. Counsel, Aligarh, letter dated 3-4-2000.
14. Sr. Divn. Engineer (Track) Northern Railway, Tundla, letter dated 10-5-2000.
15. Sr. Divn. Engineer (Track) Northern Railway, Hathras, letter dated 9-5-2000.
16. Photocopy of Rashtriya Mazdoor Congress (INTUC) Distt. Counsel, Aligarh, letter dated 18-5-2000.
17. Photocopy of Sr. Divn. Engineer Northern Railway, Hathras notice dated 4-6-2000.
18. Photocopy of Rashtriya Mazdoor Congress (INTUC) Distt. Counsel, Aligarh letter dated 15-6-2000.
19. Photocopy of Asstt. Labour Commissioner (C), Kanpur, letter dated 25-10-2000.
20. Sr. Divn. Engineer, Northern Railway, Tundla, letter dated 16-10-2000.
21. Photocopy of Vasudev application dt. 30-10-2000.
22. Photocopy of Vasudev application dt. 6-11-2000.
23. Rashtriya Mazdoor Congress (INTUC), Distt. Counsel, Aligarh, letter dated 8-11-2000.

24. Sr. Divn. Engineer (Rail Track), Tundla Northern Railway, letter dated 16-11-2000.
25. Photocopy of Vasudev application dt. 27-11-2000.

Part II

1. Photocopy of Divn. Medical Officer, Railway Hospital, Aligarh certificate No. 140622 dated 29-9-96.
2. Photocopy of Competency certificate gate No. 107C, Gang No. 81 dated 1-1-98.
3. Photocopy of Sr. Divn. Engineer, Northern Railway, Hathras A-197030 dated 17-10-98 (Special Duty Pass).
4. Photocopy of Attendance Register dated 15-11-99 to 14-12-99.

The opposite party No. 1 has filed written statement paper No. 6 alleging there in that the Vasudev was a Gangman since 7-3-76 and since 28-1-97 he was working as Gateman. It is further alleged that vide order No. E/4/Gateman/99 dated 12-11-99 Vasudev was posted as Gangman in place of Gateman. As soon as Vasudev got the information about change of duty he proceeded on sick leave and remained on sick leave and did not resume the duty on 19-1-2000. A letter was sent to Vasudev dated 1-2-2000 at his residential address for joining duty of Gangman and Asstt. Engineer, Tundla vide letter No. E/4/duty dated 19-2-2000 gave him joining duty 19-2-2000. But Vasudev did not appear for the duty of the Gangman. And since he has not joined the duty of Gangman, it is not possible for the opposite party to release the salary for the said period.

The opposite party has filed photo copies of the following documents :

1. Office letter No. E/4/Gateman/99 dated 12-11-99 regarding assigning the job of Gangman to Vasudev. (Paper No. 7/3)
2. Photo copy of documents regarding the departmental enquiry for misconduct against the Vasudev paper No. 7/4, 7/5 and 7/6.

Divisional Engineer has also filed his written statement paper No. 8 alongwith photo copy of Railway Board's letter dt. 13-5-97 Paper No. 8/1.

The worker has filed his affidavit paper No. 5 and he has been cross examined.

On behalf of the opposite party Asstt. Engineer Sri Mohan Lal has filed his affidavit alongwith annexure I i.e. assignment letter and photo copy of charge sheet and other related documents. Sri Mohan Lal has been cross examined by the Advocate for the worker.

Heard learned Advocates of the parties and perused the evidence on record and the order of reference.

The order of referencee is "Whether the action of the management of Assistant Engineer (Track), Northern Railway, Tundla regarding reversion of Sri Vasudev from Gateman to Gangman w.e.f. 15-11-99 is legal and justified ? If not, what relief the workman is entitled ?"

Question therefore, arises whether worker Vasudev has been reverted from Gateman to Gangman. There is no whisper in the statement of claim that the worker Vasudev has been reverted from Gateman to Gangman. It is pertinent to mention here that Advocate Sri N.L. Pankaj who is general secretary of Rashtriya Mazdoor Congress (INTUC) Aligarh has served a notice of PWI, Northern Railway dated 25-11-99 alleging that the opposite party vide their order of assignment of duty of Gangman to the worker Vasudev after 15-11-99. In the circumstances it is known to the worker that the job assignment was changed by the opposite party which was to be effective by 15-11-99. It was in his knowledge that his job assignment has been changed. The opposite party has argued that instead of receiving the order of change of assignment the worker Vasudev opted to proceed on sick leave as he came to know that such order is passed. The Advocate for the opposite party has argued that there is common habit amongst official of the Government not to obey the order in change of assignments and they opt to go on medical leave and this is one of such cases. The order of the opposite party is annexure I of the affidavit. The office order has been passed after the interview of the workers. It is because of the regular test and interview the worker are engaged either on Gangman or Gateman. It has been emphasised by the opposite party that pay scale of Gateman and Gangman are the same. It is the administrative order to place someone as Gangman or Gateman according to the aptitude test by interview. The worker in his evidence has not stated that Gangman and Gateman have different pay scales. On the contrary the opposite party i.e. Asstt. Engineer (Track) has specifically replied that the pay scale of Gangman and Gateman is the same i.e. 2610-3540. He has stated in cross examination that there is no difference in the pay scales. It is for the railways to put the Gateman as Gangman or Gangman as Gateman. He has further stated that Vasudev was

tested for his skill and he was not found suitable to the post of Gateman and therefore he was assigned the job of Gangman.

The learned counsel for the railways have argued that the job of Gateman is vital importance of security of railway as well as for security of citizens who cross the gate on level crossing. He has also argued that railways can not compromise so far as security of citizens are concerned.

On behalf of the worker it has not been disputed that the post of Gangman is reversion from the post of Gateman.

As there is no difference in the pay structure of Gateman and Gangman and therefore, it can not be held that the worker Vasudev was reverted from job of Gateman of that Gangman.

The learned Advocate Sri Gyan Prakash on behalf of the worker has argued that the worker was getting Rs. 100 as special pay as he was manning the crossing in which worker was entitled to the special pay of Rs. 100. This factum has not been pleaded by the worker in his statement of claim.

I agree with the argument forwarded on the behalf of the opposite party that Gateman has bigger responsibility for manning the gate which directly effect the security of the citizens.

The witness Mohan Lal, Asstt. Engineer has stated in his cross examination that the Gateman has to undergo for test and medical, since it is essential for the security. There is nothing unnatural in this procedure.

If the worker has not found suitable for the post of Gateman, he has been assigned the job of same pay scale, it does not amount to reversion.

It is noteworthy that the worker has not joined duty of Gateman right from the very beginning and he has been avoiding joining the job of Gangman. It does not amount to be a good conduct on the part of the workman, on the other hand administrative authority has power to change the job assignment according to the pay scale of the worker. In the circumstances I come to the conclusion that the worker has not been reverted. Issue is accordingly disposed of in favour of the management and the worker is not entitled to any relief.

Lucknow

10-8-2004 SHRIKANT SHUKLA, Presiding Officer

नई दिल्ली, 24 अगस्त, 2004

PRESENT

Presiding Officer : Sh. R.C. Sharma

For the applicant : Sh. Anil Sharma

For the non-applicants : Sh. Rajendra Vaish

Date of award : 30-7-2004

AWARD

1. The Central Government in exercise of the powers conferred under Clause 'D' of sub-sections 1 & 2(A) to Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act') has referred the following industrial disputes for adjudication to this Tribunal which runs as under :—

“क्या प्रबंधन स्टेट बैंक ऑफ बीकानेर एण्ड जयपुर द्वारा आदेश दिनांक 30-3-2001 के अनुसार कर्मचारी श्री गुलाब राय शर्मा पुत्र श्री रोचीराम को बैंक से पदच्युत (डिसमिस) किया जाना न्यायसंगत है ? अगर नहीं तो कर्मचारी किस लाभ का हकदार है एवं किस तिथि से ?”

2. In pursuance of the reference, the workman Sh. Gulabrai Sharma submitted his claim statement on 28-2-2003 challenging his dismissal order dated 30-3-2001 and also assailed the fairness of the enquiry. The claim was disputed on behalf of the non-applicants in their written statement. Thereafter the workman sought to amend his pleadings. At this stage on 7-1-2004 Smt. Rajni Sharma (wife of the deceased workman) petitioned before the Court that the claimant Sh. Gulabrai Sharma has died on 5-12-2003 and she prayed to implead their son Nikhil and daughter Rashmi and herself as the applicants in place of the workman. After hearing both the parties, the legal heirs of the deceased workman were impleaded as applicants in place of the workman vide order dated 7-1-2004.

3. The applicants submitted the amended claim statement wherein they pleaded that the workman Sh. Gulabrai Sharma was appointed to the post of Class IV by the non-applicant bank on 7-7-82, who was subsequently promoted to the post of Cashier and after initiating the domestic enquiry against him, he was found guilty of the alleged misconduct and was resultantly dismissed from the service vide order dated 30-3-2001. They assailed the fairness of the enquiry. In the amended written statement, the non-applicants have pleaded that the workman had wrongfully made the payments and had taken the loan from the bank after wrongfully pledging the artificial gold ornaments, who was found guilty of misconduct and was consequently dismissed from the service.

4. Vide order dated 21-5-2004 of this Court the domestic enquiry conducted against the workman was found to be unfair and improper.

का. आ. 2332.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ बीकानेर एंड जयपुर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/लेबर कोर्ट, जयपुर के पंचाट (संदर्भ संख्या आई. डी. नं. 22/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-8-2004 को प्राप्त हुआ था।

[सं० एल-12012/138/2002-आई.आर. (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 24th August, 2004

S.O. 2332.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 22/2002) of the Central Govt. Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Bikaner & Jaipur and their workman, which was received by the Central Government on 23-8-2004.

[No. L-12012/138/2002-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR**

Case No. CGIT-22/2002

Ref. No. L-12012/138/2002-IR(B-I)

Late Sh. Gulabrai Sharma,
S/o Sh. Rochi Ram Sharma,
Through his legal heirs,
R/o House No. 27/A,
Ward No. 14, Purani Abadi,
Sriganganagar (Rajasthan)

.....Applicant

Versus

1. The General Manager,
State Bank of Bikaner & Jaipur,
Regional Office,
Gaganpatti, Jawahar Nagar,
Sriganganagar.

2. The Branch Manager,
State Bank of Bikaner & Jaipur,
Branch Vijay Nagar,
Distt. Sriganganagar.

.....Non-applicants

5. On the next date of hearing i.e. on 16-6-2004, on behalf of the applicants an application was moved before the Court stating that during the pendency of the reference the workman has died and his legal heirs have been brought on the record. In the event the non-applicants are permitted to lead the evidence to prove the charges levelled against the workman then the applicants would not be able to effectively contest the case since the facts relating to the charges were only in the knowledge of the deceased workman. In support of their submission they relied upon 1995 (70) FLR Rajasthan 244.

6. The non-applicants in the reply have opposed the application on the grounds that the applicants have sought the final relief by way of filing the application and seeking the exemption from the enquiry. They have stated that entertainment of the application will decide the issue of reference finally without adjudication and without affording an opportunity to the respondents to prove the charges. They have also stated that the management has the ample proof to prove the charges levelled against the workman and have relied upon 2004 (1) SCT SC 760.

7. I have heard both the parties and have gone through the record.

8. The pertinent question which emerges out for determination is whether on account of the death of the workman, the bank may be permitted to lead its evidence in support of the charges levelled against the workman.

9. The Id. representative for the applicants contends that due to the death of the workman the charges cannot be proved against him by adducing the evidence on behalf of the bank and that there is no justification now to lead the evidence. His contention is that it was the deceased workman who could be able to confront the management witnesses in their cross-examinations.

10. For contra, the Id. representative for the non-applicants has submitted that once the dispute has been referred to the Tribunal, it should prefer to pass an award by giving an opportunity of leading the evidence to both the parties. The applicants are seeking the relief which would deprive the non-applicants of their right to produce the evidence and the right of the non-applicants to prove the charges cannot be taken away by filing such miscellaneous application.

11. Both the Id. representatives have relied upon the aforementioned judicial pronouncements respectively.

12. I have bestowed my thoughtful consideration to the rival contentions and have carefully perused the referred to decisions.

13. In 1995 (70) RLR 244 referred to on behalf of the applicants, the facts are that the workman died on 7-12-87 during the pendency of the reference who was survived by his wife and sons, who were made the parties. The enquiry held against the workman by the Life Insurance Corporation of India had been held to be unfair by the Tribunal during the lifetime of the workman and the Corporation was granted the permission to lead the evidence to prove the charge levelled against the workman. The Tribunal arrived at a conclusion that the charges were proved. But it directed that the workman was entitled to wages up to 7-2-87 which may be paid to his legal heirs. Both the parties challenged the award by filing the writ petitions before the Tribunal respectively which were dismissed.

14. The Hon'ble DB has observed that the facts relating to the termination order, holding the enquiry unfair and the death of the workman were undisputed. It was also observed that the charge against the concerned workman was held to be proved on the basis of the evidence which was led before the Tribunal by the employer after the death of the concerned workman. On these facts, the observation made by the Hon'ble Court is quoted as below :—

"....., we are of the considered opinion that since the workman had died on December 7, 1987 and it had already been held earlier by the Tribunal that the enquiry held by the employer was unfair, the appellant could not seek to prove the charge after the death of the concerned workman. No charge can be proved on the basis of the evidence tendered after the death of the charge-sheeted workman. Argument of Shri Agrawal is that the charge could be proved even after the contemporaneous record as the charge was only of not giving the prescribed standard of work. We do not agree with this argument for the simple reason that only the deceased workman could confront the employer with the circumstances in which the prescribed standard of work could not be done by the legal representative, i.e., the widow of the deceased workman and his sons. Only the deceased workman could confront the witnesses of the employer with such circumstances in which it may not have been possible for him to give the prescribed standard of work. Therefore, to say that the work put in by the concerned employee workman was on record and the requisite standard of work had been prescribed and therefore the charge could be proved even against a dead person without causing any prejudice to him, is wholly misconceived, rather ill-conceived. In such circumstances, we do not find that the Tribunal committed any illegality in granting the relief of wages and other consequential financial benefits to the legal representatives of the deceased workman on the basis of the Supreme Court decision in *Deshraj Gupta V. Industrial Tribunal, Lucknow* for the

period from the date of the termination to the date of the death of the workman."

15. Evidently, the facts of the referred to case are squarely applicable to the present controversy and the contention canvassed on behalf of the non-applicants is fortified by the observations made by the Hon'ble Court.

16. On the other hand, the Ld. representative for the non-applicants has relied upon 2004 (1) SCT SC 760 and has contended that an opportunity to justify the charge should be given to the non-applicants. In this case, the facts were that the workman committed certain misconduct as a result of which her service was terminated by the employer. Having regard to the alleged misconduct as also her past misconduct, she was dismissed from the service. The issue framed before the Labour Court was as to whether the termination order of the workman was in violation of the principles of natural justice as no domestic enquiry proceedings were held for the said purpose. The management was permitted to lead the evidence to prove the charge. After examining the evidence, the charges levelled against the workman were found to be proved.

17. The Hon'ble Court, under these circumstances, has observed that where an employer has failed to make an enquiry before dismissing a workman, it is open to the employer to justify the action before the Tribunal by leading evidence. Thus, the facts of this case are distinguishable from the facts of the case at hand and the decision supra is of no avail to the Ld. representative for the non-applicants.

18. On these facts and in the light of the decision rendered in 1995 (70) FLR Rajasthan 244, in the instant case the non-applicant bank cannot be permitted to lead the evidence to prove the charge levelled against the workman on account of his death during the pendency of the reference. Following the principle enunciated in the decision supra, the applicants, being the legal heirs of the deceased workman are entitled to the full wages from the date of his dismissal from the service, i.e., 30-3-2001 upto the date of his death 5-12-2003. They are also entitled to other financial benefits which the deceased workman could receive up to the date of his death. The reference is adjudicated in this manner and an award is passed in these terms accordingly.

19. Let a copy of the award be sent to the Central Government for publication under Section 17(1) of the Act.

R. C. SHARMA, Presiding Officer

नई दिल्ली, 24 अगस्त, 2004

का. आ. 2333.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच,

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-कम-लेबर कोर्ट, नई दिल्ली के पंचाट (संदर्भ संख्या आई. डी. नं. 68/94) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-8-2004 को प्राप्त हुआ था।

[सं० एल-12012/62/1994-आई.आर. (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th August, 2004

S.O. 2333.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 68/94) of the Central Govt. Industrial Tribunal-cum-Labour Court, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 23-8-2004.

[No. L-12012/62/1994-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II, NEW DELHI

L.D. No. 68/94

Presiding Officer : R.N. RAI

In the matter of :—

Darshan Grover

Versus

State Bank of India

AWARD

The Ministry of Labour by its letter No. L-12012/62/94/IR (B-I) Central Government Dt. 14-06-1994 has referred the following point for adjudication.

The point runs as hereunder :—

"Whether the action of the management of the State Bank of India, New Delhi in placing Shri Darshan Grover, Clerk under suspension w.e.f. 16-05-1987 and continuing to keep him under suspension for about 7 years is justified? If not, what relief the said workman is entitled to"

The claimant has filed statement of claim. In the statement of claim, he has stated that the workman is a

permanent employee of the State Bank of India, herein after referred to as the "Bank". The Bank is a statutory body and the service conditions of the employees are incorporated in Sastry/Desai Awards as modified by the various Bipartite Settlements. They have acquired statutory status. The workman is working at Central Secretariat, New Delhi Branch of the Bank. The workman was placed under suspension by the Bank in the year 1987 vide their Memorandum No. 299 dated the 16-05-1987. A photocopy of the Memorandum dated 16-05-1987 is enclosed marked as Annexure I.

That as per the provisions of the Awards governing service conditions of the workman, he can be suspended from service under the following two circumstances :—

- (i) Para 521(2)(a) of Sastry Award :—"When in the opinion of the management an employee has committed an offence, unless he be otherwise prosecuted, the Bank may take steps to prosecute him or get him prosecuted and in such a case, he may also be suspended". A photocopy of the relevant provision of the Award is enclosed marked Annexure II.
- (ii) Para 521 (10)(b) of the Sastry Award read with para 18 28 of Desai Award (Page 204, para 8, chapter 22 of reference book on Staff Matters, Volume II—Part I of the Bank). This para provides that an employee may be suspended pending departmental enquiry as provided under para 521 (10) (a) of the Sastry Award. A photocopy of the relevant portion of the Award is enclosed marked Annexure III.

That in the present case the suspension of the workman was not due to initiation of any enquiry as provided in para 521 (10)(b) read with para 521 (10)(a) of the Sastry Award nor the Bank had or was contemplating any case against the workman connected with his employment in the Bank. The Bank had also neither initiated nor contemplated any steps to prosecute or get the workman prosecuted for any act/allegation against him linked to his job in the Bank. There was no cause or justification to suspend the workman and the orders of suspension served upon the workman were illegal and void at the very inception. That the bank had neither any cause nor any provision in the service conditions applicable to the workman to suspend him from the Bank's service without any specific charges against him and thereby harass him and his family. That the family of the workman is suffering torture for the last more than seven years due to the illegal suspension and payment of lesser wages to the workman. The Bank had no reasons to pay lesser wages to the workman

than he was getting prior to his illegal suspension (as per the scale wages).

That since the Bank had not filed any complaint with the Police or CBI, the workman should have been paid full salary and allowances after one year of his suspension, as provided for the bipartite Agreement. A Photocopy of the said Agreement is enclosed marked Annexure-IV.

That the workman represented to the Bank against his illegal and wrongful suspension from time to time, but the bank did not respond. A photocopy of his representation dated the 27-05-1991, addressed to the Bank is enclosed marked Annexure-V. That the Association also requested the Bank to lift the illegal suspension orders served upon the workman, but the Bank did not reply. A copy of the Association's letter No. GS/92/40 dated 19-08-1992, is enclosed marked Annexure-VI. That the Association was left with no other alternative but to raise an Industrial Dispute before the Asstt. Labour Commissioner (Central), New Delhi. But due to adamant attitude of the Bank Management, the same could not be settled, hence the reference.

The management has filed written statement. In the written statement, it has been stated that the statement of claim has not been signed and verified by the claimant, hence the same is liable to be rejected. That even otherwise, the dispute is not maintainable because the claimant has been placed under suspension because of his involvement in a fraud case. An F.I.R. was lodged by the Deputy Registrar (V), Registrar Co-Operative Society, Parliament Street, New Delhi with Police Station, Tilak Nagar, Delhi vide F.I.R. No. 193 dated 08-04-87 u/s 406, 408, 420, 488, 471, 477(A), 120(B) I.P.C. The challan has already been filed by the police in the court and the claimant has been served with the copies of the challan as per the information available with the police.

Para 521(2)(a) of the Sastry Award governing the terms and conditions of claimant provides as under :

"When in the opinion of the management an employee has committed an offence, unless he be otherwise prosecuted, the bank may take steps to prosecute him or get him prosecuted; and in such a case he may also be suspended."

The above para clearly provides that whenever there is any prosecution, the employee can be placed under suspension. In the present case, the claimant has been put under suspension because he is being prosecuted for a serious offence which involves moral turpitude. As such, the suspension of the employee is completely justified. Moreover, the bank is a financial institution where trust is the foundation of relationship of employer and employee and when an employee is involved in an offence of criminal

breach of trust, which is anti-thesis of trust, the bank cannot afford to continue the employee to deal with its financial affairs. No where the right of the master to put off the servant from duty temporarily was ever intended to be curtailed.

The Para 521(5) (a) of Sastry Award clearly provides that unless he be otherwise prosecuted, the bank can take steps to prosecute him or get him prosecuted and in such case, he may; also be suspended. The suspension cannot be related only to the circumstances when the prosecution has been initiated by the bank. The para provides that the bank has to prosecute the employee only when the prosecution has not already been launched. If the prosecution has already been launched, then the bank cannot further prosecute the employee, but in both these situations, he can be placed under suspension. Moreover in the present case, as already stated, the employee has been involved in a very serious offence of criminal breach of trust, etc. and as a matter of policy of the bank, he has to be suspended. Further, the employer has an inherent right to put off the services of an employee temporarily.

The subsistence allowance is being paid to the claimant as per service conditions of the claimant. If the criminal trial of the claimant is not being completed within a reasonable time, the bank has not control over the same.

As per the terms and conditions of service of the employee, when the investigations are being carried out by the outside agency, the subsistence allowance is to be paid $\frac{1}{2}$ of the pay and allowances every month until the enquiry is over. In the present case, the enquiry/trial is still going on. As such, the claimant is entitled to subsistence allowance *(i)* $\frac{1}{2}$ of pay and allowances which is being paid. It is not the question whether the bank has filed the complaint with the C.B.I. or the complaint has been filed by any other person or by the C.B.I. themselves. The question is that the man is being prosecuted.

Most of the paragraphs of the statement of claim have been denied. Only a few paragraphs regarding service of the applicant workman have been admitted. The claimant has filed rejoinder. In his rejoinder, he has reiterated the statement of claim and has further stated that he has been for a long period under suspension and he has committed no fault regarding his employment.

Heard arguments from both the sides and perused the papers on the record. It was submitted from the side of the workman that para 521(1), para 521(4) and 6 of Sastry award, it is an established law that "If the act complained of has no relation to his duties towards his employer, it would not be an act of misconduct towards his employer. In this connection, my attention was drawn

to 1975, Lab. IC 194 (195) Guwahati (DB). It was further submitted that the State Bank of India Staff Association headed by Shri S.K. Patney as circle President is the recognised union and State Bank of India has no administrative control over the affairs of the Thrift Society. No enquiry is pending against him and no enquiry is contemplated. As such, in view of para 521, his suspension is illegal and unjustified.

It has been further submitted that initially the bank had suspended five employees but he has allowed to retire 3 employees, namely, S/Shri Amrit Lal, Airy, Anil Jain and Pankaj Chakraborty and they have been paid full benefits and they were given full salary and allowances for the period of suspension and they were retired from the banks service without any blemish. This was done in all the said three employees and he has applied for retirement under the Bank's VRS Scheme, but was denied the same with the objection, "The employee is under suspension". It has been further stated that according to the decision in 1991-ILLJ-1003 HC MP, an employee cannot be suspended only on the basis of lodging of the FIR. No enquiry is pending even in the Registrar Office. A criminal case is pending in the court and till today even the challan has not been filed and the criminal case is not going to be decided within three years. The workman has been falsely implicated and that has no nexus with his employment in the bank as the cooperative society is an independent body. The Hon'ble Supreme Court in Civil Appeal No. 913(N) of 1968 has held that employer cannot take action in regard to the misconduct in respect of such cooperative society. As such, the Hon'ble Supreme Court has also held that cooperative society is an independent body and employee of a bank cannot be suspended or dismissed regarding his misconduct in the cooperative society. It has been held in N.B. Shukla versus Bank of India by the Hon'ble Bombay High Court that an employee of Baroda Bank as Office Bearer of Cooperative Society, alleged to have committed irregularity. Such irregularity being enquired into by an advocate and Bank of Baroda has not been held to be a proper authority to suspend or dismiss the workman. My attention was drawn to D.S. Mohammed Khan versus The Secretary to the Govt., Rural Development, 1983(2) LLJ 219, it has been held that in case no chargesheet has been filed in the criminal court, suspension is penal. It has been held by the Hon'ble High Court of Allahabad in State Bank of India versus Shri R.N. Mishra that order of suspension passed before the charge sheet has been served on the plaintiff was without jurisdiction and ineffectual. It has been held in 1974 SC Cases (L&S) 488, that misconduct in employment cannot extend over cooperative formed by employees, employer cannot take action in respect of the misconduct in respect of such cooperative society.

It was submitted from the side of the management that five employees have been implicated in the embezzlement of cooperative societies. Shri Darshan Grover at Sl. No. 5. The other three employees have obtained VRS and they have been given full wages but Shri Darshan Grover's case is different one and so his case cannot be taken at par with the other employees who have been given VRS alongwith full allowances and pay.

It was submitted from the side of the workman that Shri S.K. Patney is the President of State Bank of India Staff Association. SBI has no control over the Cooperative Thrift society. At present there is no enquiry pending against the workman nor contemplated at the moment. Similar position is about the prosecution on behalf of the bank. As such, it is explicit from the cross-examination of MW/1 that no enquiry is pending and no enquiry is completed and no prosecution is going on at the instance of the SBI. It has been held by the Hon'ble Apex Court in 1996, ILJ Page 394 that employee under suspension is entitled to increment and allowances after one year in terms of Clause 17 of the Desai Award. It has been held by the Hon'ble Supreme Court in Balram Singh versus Municipal Council, Dhamtari that there is no power in service rules to suspend an employee only on the basis of registration of an offence by the Police. If such a power is inferred, any employee may be suspended even if the offence is registered by the Police on the basis of a false report. It was submitted by the management that the workman applicant has admitted in his cross-examination that he put signature on the blank cheques as per direction of the President. No prudent man will put signature on blank cheque. Whatever may be the case, but in view of the citations referred to above, an employee cannot be suspended for a very long period. In this case, the employee was suspended on 16-05-1987 and he is still under suspension for over 17 years. So his suspension at present is not justified. More so, in view of the fact that other co-accused have been given full pay and wages of the suspension period.

The reference is replied thus :—

The action of the management of the State Bank of India, New Delhi is placing Shri Darshan Grover, Clerk under suspension w.e.f. 16-05-1987 and continuing to keep him under suspension for about 7 years is not justified. The workman is entitled to be reinstated immediately with full back wages and he would be entitled to get 100% back wages in case he is acquitted by the court.

The award is given accordingly.

Dt. 2-8-2004

R. N. RAI, Presiding Officer

नई दिल्ली, 24 अगस्त, 2004

का० आ० 2334.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वैश्य बैंक लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-कम-लेबर कोर्ट, बंगलौर के पंचाट (संदर्भ संख्या आई. डी. नं. 31/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-8-2004 को प्राप्त हुआ था।

[सं० एल-12012/23/2002-आई०आर० (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th August, 2004

S.O. 2334.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 31/2002) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Vysya Bank Ltd. and their workman, which was received by the Central Government on 23-8-2004.

[No. L-12012/23/2002-IR (B-I)]

AJAY KUMAR, Desk Officer

**ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**

Dated : 13th August, 2004

PRESENT:

SHRI A.R. SIDDIQUI, Presiding Officer

C. R. No. 31/2002

I Party

Shri M.S. Satish,
No. 172, 7th Cross,
7th Main, II Block,
Jayanagar,
Bangalore-560 011,
Karnataka.

II Party

The Chief Manager
(Employee Relation),
Vysya Bank Limited,
DR Department,
Corporate Office,
No. 72, St. Mark's Road,
Bangalore-560 001.

APPEARANCES

I Party

: Shri B.C. Mahesha
Advocate

II Party

: Shri B.C. Prabhakar/Sh. Prasad
Advocate

AWARD

नई दिल्ली, 24 अगस्त, 2004

1. The Central Government by exercising the powers conferred by Clause (d) of Sub-section (1) and Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-12012/23/2002-IR(B-I) dated 27-06-2002 for adjudication on the following Schedule :

SCHEDULE

"Whether the action of the management of Vysya Bank Ltd. in dismissing the services of Shri M.S. Satish, Clerk, w.e.f. 01-02-2000 after imposing penalty is justified? If not, what relief the applicant is entitled?"

2. Case was taken up before the Lok Adalat and as the result of conciliation-learned counsel representing the Management and respective parties have filed a Joint Memo to pass an Award in terms of the settlement memo.

3. Hence the following award, reference is answered in terms of the settlement as under :

- (a) It is agreed between the parties that the Second Party shall convert the punishment Order of Dismissal into that of Compulsory Retirement from service as from the date of dismissal itself.
- (b) It is agreed by the first party workman to convert the Order of Dismissal into that of compulsory retirement from service as from the date of dismissal itself.
- (c) It is agreed between the parties that the Second Party shall release the terminal benefits to the first party workman. It is further agreed by the First party that he will not claim any interest on Gratuity amount.
- (d) With this Settlement, the claims made by the first party against the second party in the above case, is fully settled, leaving no claims whatsoever against the second party. The relationship of Employer and employee have come to an end between the parties as from 02-02-2000 itself.

(Dictated to the LDC, transcribed by him, corrected and signed by me on 13th August, 2004)

A.R. SIDDIQUI, Presiding Officer

का. आ. 2335.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केन्टोन्मेन्ट बोर्ड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. II, नई दिल्ली के पंचाट (संदर्भ संख्या 115/91) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2004 को प्राप्त हुआ था।

[सं० एल-13012/2/91-आई आर (डी यू)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 24th August, 2004

S. O. 2335.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 115/91) of the Central Govt. Industrial Tribunal/Labour Court No. II, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Cantonment Board and their workman, which was received by the Central Government on 24-8-2004.

[No. L-13012/2/91-IR (DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

**BEFORE THE PRESIDING OFFICER: CENTRAL
GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR-COURT II,
RAJENDRA BHAWAN, GROUND FLOOR,
RAJENDRA PLACE, NEW DELHI**

PRESIDING OFFICER: R. N. RAI I.D. NO. 115/91

VIJAY KUMAR

VERSUS:

THE MANAGEMENT OF CANTONMENT BOARD

AWARD

The Ministry of Labour by its letter No. L-13012/2/91/IR (DU) Central Government dt. 27-09-1991 has referred the following point for adjudication.

The point runs as hereunder :—

"Whether the action of the management of the Cantt. Board, Meerut in terminating the services of Shri Vijay Kumar son of Shri Ram Singh w.e.f. 16-11-1987 is justified? If not, what relief he is entitled to and from what date".

The workman has filed statement of claim. It has been stated that he was selected and put in the service of the management at the post of Mazdoor in 1986 and he worked upto 16-11-1987 in the Water Supply Department and his last drawn wages was Rs. 400/-. He performed his duty satisfactorily but his services were illegally and arbitrarily terminated by the management without giving him any notice and compensation for retrenchment so his case is covered by the provisions of Section 25(G) and Section 25(H) of the ID Act, 1947. It has been further stated that the workman since the termination of his services, sent several reminders but his case was not considered so he filed conciliation proceedings and the matter has been referred to this Tribunal for adjudication.

The management has filed written statement and it has been stated in the written statement that the workman applicant was appointed as daily wages Mazdoor for a specified time, on a temporary work, at the rate of Rs. 13 per day only, and on completion of the said work, he was automatically struck off therefrom. The alleged workman's allegation that he was selected and put in service of the management is wrong and not admitted. That this court has got no jurisdiction to decide the case. The workman has not completed 240 days work.

The claimant has filed rejoinder and in his rejoinder, he has reiterated the averments of his statement of claim and has stated that he has worked for more than 240 days.

Heard arguments from the side of the workman. The management has filed written argument but no oral argument was advanced from the side of the management.

The management has filed Annexure-1, the seniority list of 1986 and in that list, the name of the workman applicant has been mentioned on serial number 193 and the date has been mentioned as 25-3-1987. It appears that the workman was engaged in 1987. The workman has stated in his cross-examination that he has got no appointment letter from the Cantonment Board. I do not remember the date of the month but it was in 1986. From the cross-examination of the workman, it becomes quite explicit that he did not know the date on which he was appointed in 1986. Even in the statement of claim in para-1, he has specifically mentioned that he was selected at the post of Mazdoor in 1986. Here also, he has not mentioned the date of his appointment. So it cannot be said that he worked for 240 days. The management has filed the list of Muster Roll and it appears that Shri Vijay Kumar has received a payment of

Rs. 78 in March, 1987 and he has received payment of Rs. 169 in November, 1987. As such, the management has submitted the seniority list and the management has also mentioned the working days of Shri Vijay Kumar. That paper has not been denied. According to that paper, he has worked for 178 days. As such, seniority list has been prepared and the same has been displayed. It is not the case of the workman applicant that juniors to him have been retained in service and he was discharged. According to the paper regarding payment, he was made payments for the period of his work and he was paid twice. He himself has not filed any paper to prove payment otherwise and he has not filed any paper to prove that he worked for more than 240 days juniors to him have been retained while his name was struck off. His name appears on Sl. No. 193 which is at the end of the seniority list.

That it was subitted from the side of the workman that Sections 25(G) and (H) are applicable and he should be regularised. For regularisation also, he should have proved that some other workman have been employed after his so-called termination.

My attention was drawn to 2000 LLR 947, 2004 (100) FLR 938, 2004(102) FLR 283 and several other citations. I have gone through all that citations cited on behalf of the workman but none of the citations are applicable in his case as he has not worked for 240 days so 25(F) is not attracted. Seniority List has been displayed and he has been made payment only twice for a short period and he himself has stated that he was posted at the post of Mazdoor so he was not a workman. Cantonment Board is an industry no doubt but the workman applicant has to establish that he has worked for 240 days or juniors to him have been retained in service but these two facts have not been proved so the workman is not entitled to get the benefit under Section 25(F) or 25(G) & (H) or 25(2)(oo)(bb). The workman applicant has not succeeded in proving his case and so he is not entitled to get any relief.

The law cited from the side of the workman are not applicable in the facts and circumstances of this case.

The reference is replied thus :—

The action of the management of the Cantt. Board, Meerut in terminaaing the services of Shri Vijay Kumar, son of Shri Ram Singh w.e.f. 16-11-1987 is justified. The workman is not entitled to get any relief as prayed for.

The award is given accordingly:

Dated : 5-8-2004

R.N. RAI, Presiding Officer

नई दिल्ली, 24 अगस्त, 2004

का. आ. 2336.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार खादी ग्रामोद्योग भवन के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. II, नई दिल्ली के पंचाट (संदर्भ संख्या 119/94) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2004 को प्राप्त हुआ था।

[सं. एल-42011/30/93-आई.आर. (डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 24th August, 2004

S.O. 2336.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 119/94) of the Central Government Industrial Tribunal/Labour Court, No. II, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Khadi Gramodyog Bhawan and their workmen, which was received by the Central Government on 24-8-2004.

[No. L-42011/30/93-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT-II NEW DELHI

R. N. RAI, Presiding Officer

I. D. No. 119/94

IN THE MATTER OF

General Secretary

Khadi Gramodyog Bhawan Karamchari
Sangh

Versus

Management of Khadi Gramodyog Bhawan

AWARD

The Ministry of Labour by its letter No. L-42011/30/93-IR(DU) Central Government dated. 31-10-1994 has referred the following point for adjudication.

The point runs as hereunder :—

“Whether the action of the management of Khadi Gramodyog Bhawan in not maintaining the P.S.P.D. register for Lower Division Clerks and Salesman-III is justified ? If not to what relief the concerned workmen are entitled”

The union has filed statement of claim on behalf of the workmen. In the statement of claim, it has been stated that the above-named management of Khadi Gramodyog Bhawan, New Delhi is one of the several Trading Units of Khadi and Village Industries Commission which has been established under the Khadi and Village Industries Commission Act, 1956 passed by the Parliament. The entire working of Khadi and Village Industries Commission/Khadi Gramodyog Bhawan, New Delhi is being financed by the Central Government while Khadi Gramodyog Bhawan Karamchari Sangh is registered Trade Union of all the workers of Khadi Gramodyog Bhawan, New Delhi.

That as per Standing Order No. 738 read with Standing Order No. 788, 941, 1218, 1231, 1307 and 1486 all Class-IV Employees having 3 years service, who have passed S.S.C. or its equivalent examination etc. may be promoted to Class-III vacancies subject to there being no adverse remark in their respective confidential reports. However, in case of SC/ST Employees the requirement of minimum 3 years service may not be insisted upon for such promotion. However, the Manager, Khadi Gramodyog Bhawan, New Delhi did not promote all Class-IV Employees who were eligible/entitled for promotion as per aforesaid Standing Orders to the post of Salesmen-III and LDC. When the case was filed 33 vacancies of Salesmen-III up to November 1993 and 7 vacancies of LDCs up to July 1992 were in existence. That while filling the 33+7 vacancies (S/M-III+LDC) the management also violated the principles/policy underlying the Standing Order No. 738 under which all intermediary posts, i.e. posts which are provided for to be filled up by promotion from lower cadre employees of the Commission, are to be filled up by promotion as well as direct recruitment on the basis of PSPD procedure as laid down in Standing Order No. 941 read with Standing Order No. 788.

That as per Standing Order No. 1231 read with Standing Order No. 1307 all non-matriculate Class-IV Employees having 3 years service under the Trading Unit Khadi Gramodyog Bhawan, New Delhi are eligible/entitled for promotion to Class-III posts provided they pass a qualifying test and also subject to their being found fit for promotion on the basis of their respective service records. However the Khadi Gramodyog Bhawan, New Delhi, in violation of the above Standing Orders did not promote all the eligible/entitled Class-IV Employees by holding necessary

qualifying test against the aforesaid 33+7 vacancies of Salesmen-III and LDCs which were filled up to November 1993.

That the excuse of the management in excluding peons, dafteries, sweepers, watchmen on the arbitrary ground of their designations is not justified even under the principles underlying Standing Order No. 1231 because :—

- A. All the peons, dafteries, sweepers and watchmen have been doing all kinds of work in the Trading Units including the work of packing, sale, etc. and their designations are misnomers and for names sake and there is no difference between their primary duties and that of helpers/packers.
- B. Because the above Class-IV employees are non-ministerial staff and their duties do not involve, drafting and typing which has been clarified in the note given in the aforesaid Standing Orders also.
- C. Because Khadi Gramodyog Bhawan, New Delhi is a Trading Unit and virtually the entire staff thereof is engaged in Trading (i.e. sale, purchase, packing etc.) work which is non-ministerial work.
- D. Because management has been continuously following the practice of promoting the so-called peons etc. employees to the post of Salesmen-III and LDCs as will be seen from the following few examples :—

P.S. Gosain, Kedar Tiwari, Om Prakash Rawat, P.S. Bhatnagar, Mooi Chand, R.D. Singh, R.S. Rawat, Arvi Shankar, Misra, Sanjay Sharma, Ajay Gupta, Vinay Kumar, Ram Vilas, Kishan Singh Sone, Pramod Kumar, Janmejaya, Ramesh Chand, Rajinder Chaudhary, Vir Singh etc.

That the workmen through their Union have served upon the management demand notices from time to time on the aforesaid points and the last being dated 20-07-1992 demanding from the management to give opportunity of promotion to all the entitled eligible Class-IV Employees for the promotion to the posts of Class-III as per the relevant Standing Orders. However, when the management continued to deprive the Class-IV employees of the opportunity for promotion to Class-III posts the workmen through their Union filed an application before the Conciliation Officer on 11-11-1992 but the conciliation proceedings initiated by them failed due to the non-cooperative and obdurate attitude of the employer.

That the management published an advertisement in "Jagriti" on 01-11-1993 calling applications from Khadi and Village Industries Commission Employees for filling up, *inter alia*, the posts of LDC and Salesmen-III. It shows that the posts of LDC and Salesmen-III are not initial posts but are intermediary ones upon which the principles of PSPD as laid down in Standing Order No. 941 read with Standing Order No. 788 applies. Advertisements to the same effects were also published in Jagriti on 1-7-1991, 1-11-1993, 1-1-1994, 28-1-1994. Again advertisements by Departmental Circulars were also issued to the same effect by Manager, Khadi Gramodyog Bhawan, New Delhi on 30-4-1990 and on several other dates.

GROUND

- A. Because the impugned action of the employer is violative of articles 14, 16 and 21 of the Constitution of India as also principle of natural justice, equity and good conscience.
- B. Because the impugned action of the employer constitutes unfair labour practice and is therefore illegal, being in violation of section 25-T of the Industrial Disputes Act.
- C. Because the action of management/employer is against the Standing Orders applicable to the employees of Khadi Gramodyog Bhawan, New Delhi.
- D. That the employer being a public organization has a duty to be fair, just and equitable to all the workmen.
- E. Because the employer cannot pick and choose and abuse his authority to damage the career prospects of the workmen.
- F. Because the action of the employer is mala fide, unfair, unjust on the fact of it.

The management has filed written statement. It has been stated in the written statement that the statement of claim has not been filed in accordance with the provisions of Rules 10B of the Industrial Disputes (Central) Rules, 1947. It is not accompanied by the documents or list of witnesses. It is liable to be rejected on this ground alone. That the persons whose interests are likely to be adversely affected in case the relief claimed is granted, have not been made parties to the dispute. They are necessary and proper parties. The reference is liable to be answered against the claimants as it is well settled that no relief can be granted without giving proper opportunity to the persons whose interest are liable to be adversely

affected by the decision. That the claim in respect of very old matters being stale is liable to be ignored. That the claims which are beyond the reference order are liable to be ignored. That the claim with respect to the Salesman III cannot be entertained under the provision of the Industrial Dispute Act as Salesman are not workmen. Moreover, in case the Union's claim that all the employees are doing sales jobs is to be believed then no dispute whatsoever can be raised with regard to their service conditions etc. The claim is liable to be rejected on this ground also. That similar dispute involving the same question have been referred to this Hon'ble Tribunal and are pending adjudication. It is submitted that pending the adjudication of the earlier referred disputes, adjudication of this dispute is liable to be stayed/kept in abeyance.

It is submitted that various standing orders have been issued from time to time. The interpretation and applicability of the same is, however a matter of argument and not of pleadings. Reliance shall be placed on the language of the Standing Order itself. The interpretation of the Standing Order is not accepted and the management shall rely on the relevant Standing Order at the stage of arguments. Infact, there is no line of promotion from Class IV to Class III. However, in case a Class IV employee is eligible for appointment to a Class III post, and applies for the same, and is found suitable (after going through the prescribed procedure) he is appointed to a Class III post. This has been going on and several Class IV employees have been appointed to Class III posts in this manner. In the absence of detailed specifications regarding the vacancies alleged to be filled in, the management is unable to check up the exact position and reserves the right to make more specific and detailed submission if and when the union supplies the necessary particulars.

It is denied that the management has violated any principle policy underlying Standing Order No. 738. It is further submitted that the posts of Salesman III & LDC are initial posts and not intermediary ones. These posts are always filled in by direct recruitment from within the employees inside as well as from outside. The PSPD roster is not applicable to these posts. That the management has violated the provisions of Standing Order 1231 and/or 1307. The interpretation of the relevant Standing Order is not accepted and the management shall rely on the actual text of the Standing Orders at the stage of argument. There can be no question of promotion to such posts. It was for the concerned employees to apply for appointment (whenever notices/advertisements are issued) and to fulfil the eligibility and suitability requirements. It is submitted that qualifying tests have

been held from time to time as per requirements.

It is denied that peons, daftaries, sweepers and watchmen have been doing all kinds of work. It is specifically denied that they have been doing the work of packing or sale. It is also denied that their designations are misnomers or for name sake or that there is no difference between their primary duties and those of helpers/packers. It is however correct that the duties of the Class IV employees do not involve, drafting or typing. It is submitted that the work of the trading unit is managed by both ministerial and technical staff. It is denied that the management has been following the practice of promoting peons to Salesman III. The practice is to fill the posts of Salesman III by appointment (although in some cases the expression promotion may have been used inadvertently).

The notice dated 20-07-92 is not on the file and the receipt of the same is denied and the union is put to strict proof of serving the same. No particulars regarding the other notices have been given. They are denied. In fact, in the absence of proper particulars, the union cannot even be permitted to place any reliance on the same. It is denied that the management adopted non-cooperative or obdurate attitude. It is submitted that the management has not been able to trace out the relevant issue of Jagriti or the Departmental Circulars. The union has also not annexed the same in violation of R10B of the Industrial Dispute (Central) Rules. It is submitted that the posts of LDC's and Salesman III are initial posts and not intermediary ones. Any contentions to the contrary is denied.

Most of the paras of the statement of claim have been denied and only a few have been admitted and additional please have been filed.

The union has filed rejoinder and he has denied the averments of the written statement and has stated that there are circulars according to which promotions can be given to Class-IV employees and Class-III employees.

Heard argument from both the sides and perused the papers on the record. My attention was drawn by the union to Standing Order No. 788. According to this Standing Order, 25% of the posts to be filled would be by selection on merit from the existing staff in the commission and 25% are to be filled by open competition and 50% posts are to be filled by direct recruitment. According to Standing Order 941, the first vacancy by promotion, second vacancy by open recruitment, third by promotion and the fourth by open recruitment. Annexure W/3

is the list of the promotees. It is apparent from annexure-IV that class-IV employees who have passed SSC or Hindi examination and are considered for promotion to the post of LDC subject to the condition that they will acquire the required speed in Hindi Typing at 30 w.p.m. As such, according to this circular letter dt. 27-04-1993, class-IV employees are also entitled to get benefit of promotion on acquisition of certain qualifications. Annexure-IV shows that Shri Vinay Kumar was promoted in class-III cadre after passing High School Examination. According to Standing Order 1231, the commission has decided that non-matriculate employees of the commission holding class-IV posts involving primarily duties of a technical nature may be considered for appointment to higher posts in class-III category subject to some conditions. According to this Standing Orders, it becomes quite apparent that there is a policy of the board for promotion of class-III, class-IV employees to higher grades. MW/1 has admitted that there is a provision for promotion of class-IV employees to Class-III under rules and regulations. There is no seniority of class-IV employees. In case class-IV employees are eligible for promotion, in that case, a seniority list is to be kept ready. A list has been given which shows that peons have been promoted to LDC and a peon has been promoted to salesman. It was submitted from the side of the management that there are no rules for class-IV employees and as such, it is not necessary that P.S.P.D. register should be maintained. As stated above, there are provisions for the promotion of class-IV employees to LDC according to the seniority-cum-merit basis. This cannot be possible until a seniority list is maintained. The Board for extraneous reasons may promote some workman of lesser seniority. As such, PSPD register is to be maintained so that seniority of every employees may be ascertained. There is no force in the argument of the management.

The award is replied thus :—

The action of the management of Khadi Gramodyog Bhawan in not maintaining the P.S.P.D. register for Lower Division Clerks and Salesman—III is not justified. The management is directed to maintain PSPD register of all the workmen within one month from the date of publication of the award on seniority basis of all existing employees.

The award is given accordingly.

Dt : 6-8-2004

R. N. RAI, Presiding Officer

नई दिल्ली, 24 अगस्त, 2004

का. आ. 2337.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दिल्ली मिल्क स्कीम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. II, नई दिल्ली के पंचाट (संदर्भ संख्या 17/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2004 को प्राप्त हुआ था।

[सं. एल-42012/42/94-आई.आर. (डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 24th August, 2004

S.O. 2337.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 17/95) of the Central Government Industrial Tribunal/Labour Court, No. II, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Delhi Milk Scheme and their workman, which was received by the Central Government on 24-8-2004.

[No. L-42012/42/94-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

**BEFORE THE PRESIDING OFFICER, CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT-II RAJENDRA BHAWAN,
GROUND FLOOR, RAJENDRA PLACE,
NEW DELHI**

R. N. RAI, Presiding Officer

ID No. 17/95

MAHABIR SINGH

VERSUS

GENERAL MANAGER,

DELHI MILK SCHEME

AWARD

The Ministry of Labour by its letter No. L-42012/42/94-IR(DU) Central Government Dt. 20-01-1995 has referred the following point for adjudication.

The point runs as hereunder :—

“Whether the General Manager, Delhi Milk Scheme is justified in awarding penalty of compulsory retirement to Shri Mahabir Singh, Mate son of Shri Chotey Lal from the services of Delhi Milk Scheme

w.e.f. 3-08-1990? If not, what relief the concerned workman is entitled to”.

The claimant has filed statement of claim. In the statement of claim, it has been stated that he was initially appointed as a Badli worker on the post of Mate. Later on he was regularised to the post of Mate under the certified Standing Orders framed under Industrial Employment Act, 1946.

That on 25-1-1989, the applicant was served with a charge-sheet under Rule 14 of the CCS Rules, 1965 alleging that the workman while employed on distribution duty on route No. 38(E) on 16-12-1988 attempted to pilfer for 35X1 litre polypack milk in connivance with other van crew deployed on the said route. The enquiry committee was constituted to enquiry into the matter and the order of proceedings was issued by the Dy. General Manager in the capacity of Disciplinary Authority but the punishment was imposed by the General Manager, Delhi Milk Scheme who is an Appellate Authority. The Dy. General Manager is the Disciplinary Authority.

That on 3-8-1990 the General Manager, Delhi Milk Scheme who did not initiate the Disciplinary proceedings against the applicant, as aforesaid, imposed upon the workman a penalty of compulsory retirement from services as if he was the Disciplinary Authority. It is stated that the General Manager is the Appellate Authority and the Deputy General Manager is the Disciplinary Authority.

That on 31-8-1990, the workman filed an appeal to the Secretary, Ministry of Agriculture, Department of Agriculture & Cooperation, New Delhi. The Secretary in the capacity of Appellate Authority passed an order dated 06-03-1991 confirming the penalty passed by the Dy. General Manager, Delhi Milk Scheme. The order of compulsory retirement is against the rules of 1965 and it has not been passed by the competent authority. The workman was not given a reasonable opportunity to defend himself. Shri Raj Singh, Security Supervisor was not examined. Shri Mithu Lal has stated nothing before the Enquiry Officer. His evidence cannot be relied upon. There is no legal evidence against the workman and he was not given the copies of the statement of the witnesses. The documents produced by the Disciplinary Authority are false and forged, competent authority has not awarded the punishment. He is a mate where the driver is the incharge of the milk.

The management has filed written statement. The averments of some paragraphs have been denied and some of the paragraphs have been admitted. It has been stated that the charge of attempting to pilfer 35 milk filled poly packs of 1 litre each in connivance with other van staff was served on the employees and a show-cause notice was given but the facts of the show-cause notice

were denied. The HVD was appointed by the General manager and therefore, penalty order of compulsory retirement on all the van staff including the applicant was rightly passed by the competent Disciplinary Authority i.e. GM, DMS. The Appellate Authority has confirmed the penalty imposed on the applicant vide order dt. 6-3-1991. The applicant was given full opportunity to cross-examine the witnesses but he had failed to do so. The General Manager is the competent authority and he has imposed the punishment. The Enquiry Officer has given reasonable opportunity to defend the applicant. The applicant did not produce any witness in defence as such the principles of natural justice have been followed as he has been given ample opportunity to defend himself. 35 litres of extra milk was found in the bank and that was recovered from the van so the finding of the enquiry officer was rightly accepted by the competent authority and the competent authority has awarded the punishment. Shri Mithu Lal was only a reporting officer so his non-examination will be vitiate the enquiry.

The workman has filed rejoinder and in his rejoinder, he has reiterated the averments of the statement of claim and has denied almost all the paragraphs of the written statement and has taken additional pleas also. From perusal of the enquiry proceedings, it is clear that witness No. 2 Shri Kapoor Singh, Chowkidar has admitted his signature on document No. 2 and he confirmed it. The workman was asked to cross-examine him but he did not cross-examine him. Witness No. 3 Shri Mithu Lal has also verified his signature on document No. 1, 2 and 3 and he confirmed it. He has been cross-examined but he has specifically stated that recovery was made in his presence and documents were prepared accordingly. It is apparent from document No. 2 that 35 litres of milk excess was recovered and document No. 3 also proves it. As such, 35 litres of excess milk found in the van has been proved by three witnesses who were present on the spot. Shri R. K. Mishra has been examined on behalf of the management. He has admitted that the workman was not given an opportunity of being heard after the conclusion of the evidence of the management during enquiry. The copy of the enquiry report was supplied to the workman before passing the final order. From the cross-examination of MW/1, it is correct that the workman was not given personal hearing after the report of the enquiry officer. The workman has also been examined and he has stated that he did not file any appeal even against the punishment awarded to him. He is a permanent employee of the DMS. It was submitted from the side of the management that the department is not an industry as such the court has got no jurisdiction.

My attention was drawn to 1995 SC(4), 6726 and JT 1996(2) 455, 1996(2), 5926. On the basis of the law laid down by the Hon. APEX Court, it was submitted that

DMS is not an industry. In have gone through all the citations but these citations are not applicable in the facts and circumstances of the case. The Delhi Milk Scheme is an industry. It is an undertaking of the State Government for supplying milk to the public so this undertaking is run for gaining profit. Milk is sold for certain amount of money and there is profit motive. As such, in view of the Bangalore Water Supply, DMS is an industry. There is no force in the argument of the management. My attention was drawn to 1986 (2) SLR 603 SC. It has been held by the Hon. Supreme Court that in case, CCS rules are not complied with the order of the Appellate Authority is liable to be set aside.

It was submitted from the side of the management that Dy. GM is the Disciplinary Authority but he has been awarded punishment by the Manager. The GM is the appointing authority so an appointing authority can award punishment of compulsory retirement. The workman has admitted in his cross-examination that he has not filed appeal before the Appellate Authority. He has been supplied with the documents as it clear from the charge sheet and show-cause notice. A detailed enquiry has been conducted. The charge sheet has also been served on the delinquent employee and he has filed appeal against the appellate authority. As such, the enquiry officer found the guilt proved. He has been given an opportunity of being heard. Management witness has admitted in his cross-examination that the workman was not given any opportunity of being heard. It has been further admitted by the management witness that enquiry report was supplied to the workman. There is no paper on record to show that the workman was supplied with the report of enquiry officer.

The management witness has admitted that he was not afforded opportunity of personal hearing before the punishment was awarded. This is an admission of the management witness and from perusal of the award there is no such paper which shows that the disciplinary authority issued him a notice for personal hearing. As such the enquiry is vitiated on this point alone. According to CCS rules or according to the Constitution of India, before awarded punishment the workman applicant should be heard. It has been provided under Article 311 (2) of the Constitution that a notice should be given to workman applicant and opportunity should be provided of being heard. But in his this case neither the enquiry report nor he was issued a notice for personal hearing before awarded punishment. As such the enquiry is vitiated on these two point and the law cited by the workman so far as these two points are concerned are applicable to the facts and circumstances of this case.

Preliminary issue regarding fairness of the enquiry was not pressed before me and both the parties have led evidence in support or otherwise of enquiry, hence fresh evidence is not require to be taken in respect of the enquiry. The case is pending since 1995 almost for 10 year and the preliminary issue have been pressed by the management and such plea has not been taken even in the written statement. Preliminary issue should be pressed at the preliminary stage, since preliminary issue has not been pressed. As such the case is decided in totality. In the written statement it has been stated that enquiry was conducted and the CCS Rules, it is mandatory for the management to give report of the enquiry officer to the workman applicant and the workman applicant should also be given a personal hearing before the awarded punishment. As such the enquiry stands vitiated on these two counts and the compulsory retirement of the workman applicant is not justified. In this case the enquiry officer has rightly found the guilt proved, as such enquiry is fair to that extent but the rules required that the CSE should be supplied with a copy the enquiry officer's and he should be given a personal hearing before awarded punishment. These two procedures have not been followed in this case. The opportunity of personal hearing is given so that the quantum of punishment should be commensurate with the misconduct committed. In this case there are five employees and there is an attempt of pilfering 35 Ltrs. of milk. So the amount is trivial and in the light of the pronouncements of the Hon'ble Apex Court the disciplinary authority should have taken a little lenient view. The award of punishment of compulsory retirement in the facts and circumstances of the case is not justified. It is too harsh in view of the misconduct of the charge sheeted employee so I am of the considered view that so far as the quantum of service is concerned, in case two increments are stopped with cumulative effect, the ends of justice will be properly met.

Since there is an attempt to pilfer 35 Ltrs. Of milk and there are five employees who have been charged. As such punishment of compulsory retirement is too harsh in the facts and circumstances of the present case. The workman was a manual labourer and it is but natural that he must be doing some manual work so he should be reinstated from the date of his compulsory retirement with 25% back wages and he is entitled to get all the benefits subsequent to his reinstatement.

The reference is replied thus :—

The General Manager, Delhi Milk Scheme is not completely justified in awarding penalty of compulsory retirement to Shri Mahabir Singh, Mate son of Shri Chotey Lal from the services of Delhi Milk Scheme w.e.f. 3-8-1990. The workman deserves to be reinstated with stoppage of two increments with cumulative effect w.e.f. 3-8-90 with 25% back wages.

In case he is not reinstated within one month from the date of publication of the award, he will get an interest of 6% per annum.

The award is given accordingly.

Dt 6-8-2004

R. N. RAI, Presiding Officer

नई दिल्ली, 25 अगस्त, 2004

का. आ. 2338.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या 96/92) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2004 को प्राप्त हुआ था।

[सं. एल-12012/206/92-आई.आर. (बी. II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 25th August, 2004

S.O. 2338.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 96/92) of the Central Government Industrial Tribunal/Labour Court, No. 2, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 24-8-2004.

[No. L.-12012/206/92-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

**BEFORE THE PRESIDING OFFICER, CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT-II RAJENDRA BHAWAN,
GROUND FLOOR, RAJENDRA PLACE,
NEW DELHI**

PRESIDING OFFICER: R. N. RAI,

ID No. 96/92

IN THE MATTER OF:—

Pati Ram Pankaj

VERSUS

Central Bank of India

AWARD

The Ministry of Labour by its letter No. L.-12012/206/92-IR(B-II)-Central Government Dt. 12-10-1992 has referred the following point for adjudication.

The point runs as hereunder :—

“Whether the action of the management of the Central Bank of India in dismissing the services of Shri Pati Ram Pankaj w.e.f. 29-9-1990 is justified. If not, to what relief the workman is entitled?”

The claimant has filed statement of claim. In the statement of claim, it has been stated that he was appointed in the Central Bank of India after written test and interview on the basis of schedule tribe certificate. He worked at the Naya Bazar of the Bank in Delhi and he worked there till his dismissal w.e.f. 20-9-90. It has been further stated that he was served with a memo dated 16-8-88. It was alleged that at the time of his selection he declared that he was a scheduled tribe candidate and on the basis of his being a scheduled tribe candidate, he was selected. He sent his explanation but his explanation was not found satisfactory, and Sh. S. K. Abhi, Chief Officer of the Bank, was appointed an Enquiry Officer and served charge sheet dated 4-1-89. Another enquiry was also instituted against him for his misconduct. The Enquiry Officer found him guilty of misconduct and the disciplinary authority proposed the punishment of dismissal. It has been admitted that he was given a personal hearing and thereafter the punishment of dismissal was awarded. He applied to the Appellate Authority but the Appellate Authority also confirmed the order of the Disciplinary authority.

It has been further stated that the charge sheet dated 4-1-89 and 29-11-89 do not constitute acts of misconduct. There was inordinate and unreasonable delay in the initiation of disciplinary action. The charge sheet was not valid. Two charge sheets were issued simultaneously. The explanation of the workman dated 7-9-88 and 4-7-89 were not considered properly. The management did not provide him documents. The principles of natural justice have not been followed. The enquiry has been challenged *inter alia* on the grounds of principles of natural justice, delay in serving charge sheet.

The management has filed written statement. It has been stated that the workman filled up an application form dated 14-1-78 and he declared him Scheduled tribe candidate but subsequently it was found that he was not scheduled tribe candidate, so charge sheet was issued to him. He has got relaxation in passing marks in the written test and also in interview. He has been selected on these relaxations but when it was found that he did not belong to scheduled tribe candidate, a charge sheet was issued to him and enquiry was held and he participated in the enquiry. Several witnesses were examined in the enquiry. He was afforded proper

opportunity to defend himself and after concluding the enquiry, the officer found the charges proved and the report was sent to the Disciplinary Authority. After giving him personal hearing, the Disciplinary Authority awarded him punishment of dismissal from service without notice and the same was confirmed by the Appellate Authority. In the written statement, the management has denied almost all the paragraphs of the statement of claim. The statement of claim has been admitted to the extent that the workman was appointed in the bank. He belonged to Mallah caste and Mallah caste is not scheduled tribe. Proper enquiry was made and reports were obtained from the Govt. and it was found that the Mallah is not the Scheduled Tribe.

The workman has filed rejoinder. In his rejoinder, he has reiterated the averments of his statement of claim. The case is pending since 1992 but neither the workman nor the management appeared and so the case was posted for award as both the parties have submitted written arguments and the case is being decided on the basis of the written arguments submitted by both the parties.

The management has appointed Shri S.K. Abhi Enquiry Officer and he has supported the enquiry even in the court. He has been cross-examined by the workman. The workman has also examined himself and he has also been cross-examined. I have perused the papers on the record. In the written argument, the workman has stated that the enquiry was instituted against him after an unreasonable delay. His Scheduled Tribe certificated should have been verified at the earliest. He has given the certificate of the MLA of Aligarh and in Aligarh, the Mallah belong to Scheduled Tribe. He has not been afforded proper opportunity to defend himself. There is only Enquiry Officer for conducting enquiry so the enquiry is vitiated. The Disciplinary Authority and the Appellate Authority also did not consider his representation. I have gone through the enquiry proceedings. The workman has fully participated in both the enquiries. He has put his signature on every date of the proceedings and there is full participation of the workman applicant in the enquiry proceedings. The substantial question is whether he belongs to scheduled tribe or not. It was the duty of the workman applicant to prove that he was a scheduled tribe candidate. In case he fails to prove that he was scheduled tribe candidate, he cannot avail himself of the benefits of the scheduled tribes. In this respect, letter dt. 15-10-1977, his caste certificate has been issued by an MLA and an MLA is not an authority to issue any caste certificate. So the caste certificate issued by the MLA is of no value. The Scheduled Caste and Scheduled Tribe Commission, Government of India has sent letter to the Regional Manager and in that letter, it has been stated that Mallah caste has not been included in the list either of the scheduled caste or of the scheduled tribe of Uttar

Pradesh. This letter is of great authenticity. He is not even scheduled caste candidate. The Tehsildar of the concerned Tehsil has issued letter that the workman applicant belonged to Mallah caste which is a denotified caste. As such, according the certificate of even the Tehsildar, he is not a scheduled tribe or scheduled caste candidate. It has been informed by the Tehsildar dt. 18-3-1989 and it has been stated in the letter that the caste certificate dated 22-5-1987 has not been issued by that office. These letters prove that the workman applicant has produced false certificate and he was not a Scheduled Tribe candidate. The findings of the Enquiry Officer are quite correct. He has based his report on the certificates obtained from the Government and from the Tehsildar of the said Tehsil and in all the letters, it has been written that the workman applicant is a Mallah. He is not a scheduled tribe or a scheduled caste candidate. He belongs to denotified caste. He has obtained appointment declaring him to be Scheduled Tribe but he has not proved this fact during the course of the enquiry. There are sufficient papers and there is ample evidence to establish the fact that the workman applicant was not a scheduled tribe candidate so he has misrepresented and he has committed forgery. His misrepresentation and forgery amount to a grave misconduct. The findings of the Enquiry Officer are quite correct. The enquiry is fair and is not liable to be set aside. The punishment is also commensurate with the serious misconduct of the workman applicant. No interference is required.

The reference is replied thus :—

The action of the management of the Central Bank of India in dismissing the services of Shri Pati Ram Pankaj w.e.f. 29-9-1990 is justified. The workman applicant does not deserve to get any relief as prayed for.

The award is given accordingly.

Dt. 16-8-2004

R. N. RAI, Presiding Officer

नई दिल्ली, 25 अगस्त, 2004

का. आ. 2339.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ओरिएण्टल इश्यूरेन्स कं. लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 199/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2004 को प्राप्त हुआ था।

[सं. एल-17012/13/2001-आई.आर. (बी. II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 25th August, 2004

S.O. 2339.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 199/

2001) of the Central Government Industrial Tribunal-cum-Labour Court, Dhanbad No. 2, as shown in the Annexure, in the Industrial Dispute between the management of Oriental Insurance Co. Ltd. and their workmen, which was received by the Central Government on 24-8-2004.

[No. L-17012/13/2001-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 AT DHANBAD

PRESENT

Shri B. Biswas, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act, 1947

Reference No. 199 of 2001

Parties : Employers in relation to the management of Oriental Insurance Co. Ltd. and their workman.

Appearances :

On behalf of the workman : None

On behalf of the employers : Mr. D.K. Verma,
Advocate

State : Jharkhand Industry : Insurance

Dated, Dhanbad, the 3rd August, 2004

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-17012/13/2001 IR (B-II) dated 9/10-7-2001.

SCHEDULE

"Whether Shri Sanjay Kumar had worked with the Divisional Office of Oriental Insurance Co. Ltd., Kankarbagh Main Road, Patna between 15-5-94 to 17-6-96 as casual labour and if so the action of the management in terminating the service of Shri Sanjay Kumar on 18-6-96 was justified? If not, what relief the workman is entitled to?"

2. The case of the concerned workman according to Written Statement submitted by him in brief is as follows :—

The concerned workman submitted that he being an Intermediate passed was appointed as Peon on casual roll in the year 1994 by the management and since 15-5-94 to 17-6-96 continuously worked in the same capacity and put his attendance for more than 240 days in each calendar year at Sub-Divisional Office No. 3

Sudama Palace, Main Road Kankarbagh, Patna. Against that work he disclosed that management used to pay him wages @ Rs 5/- per day on weekly basis through voucher though he was very much entitled to get wages like that of sub-staff, working under the management. He alleged that the management even refused to regularise him in the year 1996, when some vacancies in the sub-staff post were vacant. He further disclosed that during the said year i.e. in 1996, he fell ill with jaundice and for which he could not attend to his duty. After recovery when he came to his place of duty management did not allow him to resume his duty. Accordingly, he not only requested the management but also submitted representation to them to allow him to resume his duty but refused and for which he raised an Industrial Dispute before ALC (C) Patna for conciliation which ultimately resulted reference to this Tribunal for adjudication. The concerned workman accordingly submitted his prayer to pass award directing the management to reinstate him in the post of sub-staff cadre with all consequential benefits.

3. Management on the contrary after filing written statement-cum-rejoinder have denied all the claims and allegations which the concerned workman asserted in his written statement. They submitted that the management never engaged the concerned workman at their office as sub-staff at any point of time. They further submitted that no Branch Manager or Divisional Manager is authorised to appoint any sub-staff as daily wage worker and accordingly the claim which the concerned workman has placed finds no truth. Disclosing this fact they submitted that as no employer-employee relationship ever grew up he is not entitled to get any relief. Accordingly they submitted prayer to pass award rejecting the claim of the concerned workman.

4. Points to be decided

"Whether Shri Sanjay Kumar had worked with the Divisional Office of Oriental Insurance Co. Ltd., Kankarbagh Main Road, Patna between 15-5-94 to 17-6-96 as casual labour and if so the action of the management in terminating the service of Shri Sanjay Kumar on 18-6-96 was justified? If not, what relief the workman is entitled to?"

5. Finding with reasons

It transpires from the record that neither the concerned workman in course of hearing of the instant reference case appeared nor considered necessary to adduce evidence in spite of giving sufficient opportunities. In the circumstances, management also declined to adduce evidence on their part taking into consideration that initial onus was on the concerned workman to prove his case.

In view of this situation considering the facts disclosed in the pleadings of both sides now let me

consider how far the claim of the concerned workman stands on cogent footing and whether he is entitled to get any relief in view of his prayer or not.

According to the claim of the concerned workman he was appointed by the management as Peon on casual basis at Sub-Divisional Office No. 3, Oriental Insurance Company Ltd., Sudama Palace, Main Road, Kankarbagh, Patna on 15-5-94. He disclosed that against the said work of Peon management used to pay him wages @Rs. 25 per day on weekly basis through voucher. He submitted that in place of his duty he had to perform all the works of Peon but in spite of taking out all the work of Peon they never considered necessary to pay wages like that of regular sub-staff working under the management. Even in the year 1996 when some vacancies of sub-staff under the management came into existence he made appeal to them for his regularisation in one of the said vacant posts but they did not give any importance to his prayer. He submitted that in the year 1996 suddenly he fell ill with jaundice and for which it was not possible on his part to work there. But after recovery when he came to his place of work with a view to resume his duty management refused to allow him to work under them. He further submitted that from 15-5-94 to 17-6-94 he worked under the management, continuously. Accordingly, he submitted representation to the management for his reinstatement but they refused. On the contrary management categorically denying the claim of the concerned workman disclosed that no employer-employee relationship even grew up in between him and the management and for which question of his regularisation as sub-staff never arose. They further disclosed that neither the Branch Manager nor the Divisional Manager is empowered to appoint any worker as sub-staff on casual basis. They further submitted that the concerned workman even has failed to produce a single scrap of paper to show that he was appointed as sub-staff on casual basis and worked under them from 15-5-94 to 17-6-96 continuously or wages were paid to him through vouchers regularly.

Considering the record I find no dispute to hold that over his claim the concerned workman raised an industrial dispute before ALC (C) Patna for conciliation. It transpires that during hearing of conciliation proceeding management in response to letter issued by ALC (C) Patna wrote a letter dt. 31-8-2000 addressed to him with request to direct the concerned workman to furnish necessary papers to show that he worked as Peon on casual basis under them for taking necessary steps on their part. From the record I find no whisper relating to submission of any such paper by the concerned workman in support of his claim.

It is the specific claim of the concerned workman that on 15-5-94 he was appointed as Peon on casual basis and posted at Divisional Office No. 3 under the management. The concerned workman though have got plenty of scope did not consider necessary to produce the said appointment letter in support of his claim. He further disclosed that he worked under the management from 15-5-94 to 17-6-96 continuously and received wages through vouchers. In order to substantiate his claim he also did not consider necessary to produce any such paper. He also did not consider necessary to adduce any evidence to that effect. No cogent paper is also forthcoming to show that he submitted representation to the management for his regularisation or his reinstatement when according to his claim management did not allow him to work further after 17-6-96. It is the specific claim of the management that Branch Manager or Divisional Manager was not competent to engage any Peon on casual basis. Referring their Manual the management submitted that there is no provision for employment of daily wages workers at their office. They categorically submitted that when there is no scope for such employment question of existence of any relationship of employer and employee in between them and the concerned workman never arose.

There is no dispute to hold that initial onus absolutely was on the concerned workman to show that he was actually engaged by the management as casual worker on daily wages basis. I find no hesitation to say that the concerned workmen in spite of getting sufficient opportunity did not consider necessary to substantiate such claim.

It is to be borne into mind that fact disclosed in the pleading cannot be considered as substantive piece of evidence to uphold the claim until and unless such claim is substantiated by cogent evidence. I find no hesitation to say that in spite of getting sufficient opportunity the concerned workman has lamentably failed to establish his claim that he was appointed by the management as Peon as casual and daily wages basis and in that capacity he continuously worked there from 15-5-94 to 17-6-96. In view of the facts and circumstances discussed above I hold that as the concerned workman has failed to adduce any cogent evidence to show that he worked under the management from 15-5-1994 to 17-6-96 as casual labour on daily wages basis, question of termination of his service by the management does not arise. Consequently, the concerned workman is not entitled to get any relief.

An Award is passed accordingly.

B. BISWAS, Presiding Officer.

नई दिल्ली, 25 अगस्त, 2004

कां. आ. 2340.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दिल्ली मिल्क स्कीम के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. II, नई दिल्ली के पंचाट (संदर्भ संख्या 80/94) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-8-2004 को प्राप्त हुआ था।

[सं० एल-42012/33/93-आईआर (डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 25th August, 2004

S.O. 2340.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 80/94) of the Central Govt. Industrial Tribunal/Labour Court No. II, New Delhi now as shown in the Annexure in the Industrial Dispute between the management of Delhi Milk Scheme and their workmen, which was received by the Central Government on 25-8-2004.

[No. L-42012/33/93-IR (DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

**BEFORE THE PRESIDING OFFICER: CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT-II, RAJENDRA BHAWAN,
GROUND FLOOR, RAJENDRA PLACE,
NEW DELHI**

Presiding Officer : R.N. RAI

I. D. No. 80/94

IN THE MATTER OF :

SH. HARINDER SINGH

VERSUS

DELHI MILK SCHEME

AWARD

The Ministry of Labour by its letter No. L-42012/33/93/IR (DU) Central Government dt. 29-06-1994 has referred the following point for adjudication.

The point runs as hereunder :—

“Whether the action of Chairman of Delhi Milk Scheme in terminating the services of Shri Harinder

Singh son of Shri Dharam Vir Singh is justified? If not, what relief he is entitled to.”

The workman has filed statement of claim. In his statement of claim, he has stated that he was appointed as a Badli worker on the post of Mate in Delhi Milk Scheme on 5-8-1982.

That on 4-11-1986, the services of the workman were terminated arbitrarily vide order dt. 14-11-1986. The workman was not served with any chargesheet. No enquiry was conducted. He was not given reasonable opportunity to defend himself within the meaning of principles of natural justice. He has worked for 240 days. Section 25(F), 25(G), 25(H) and 25(N) of the Industrial Disputes Act, 1947 are attracted. He is also entitled to receive regular pay scale of Mate w.e.f. 1-8-1983.

The management has filed written statement. In the written statement, it has been admitted that he was appointed as Badli worker in DMS w.e.f. 5-8-82 but his name was struck off from the rolls of D.M.S. vide order dt. 14-11-1986. The workman had been taken off duty twice under the provisions of certified Standing Order due to his remaining absent unauthorisedly and his involvement in a case of adulteration of milk. The workman was taken back on duty as a fresh entrant w.e.f. 1-5-1986. Thereafter, he absented himself and so his services were terminated. He has not worked for 240 days. He was afforded sufficient opportunity but he could not explain his absence so he was struck off from the rolls from 14-11-1986.

The workman has filed rejoinder. In his rejoinder, he has reiterated the averments of his statement of claim.

Heard arguments from both the sides and perused the papers on the record.

It was submitted from the side of the workman that he has completed 240 days prior to his removal so he is entitled to be reinstated in view of provision of 25(F) of the ID Act. The management has filed affidavit and in the affidavit, it has been admitted that the workman applicant worked in 1982 for 129 days. In 1983, 298 days, in 1984, 182 days and 1985, 108 days. He has worked in 1986 also. So from the affidavit of the management, it becomes quite clear that in 1983, in 12 calendar months, the workman has worked for 298 days. It was submitted from the side of the management that according to annexure R-6, a notice was given to him and in this notice, it has been mentioned that as to why he should not been taken off duty on account of his involvement for keeping one bottle scrap on 20-1-1986 while he was posted on route No. 59(M) and caught red handed by Tally clerk and it was ordered that he should be taken as a fresh entrant with immediate effect by forfeiting his past services.

It was argued from the side of the workman that there is a charge against the workman for keeping one bottle

scrap on 20-1-1986. In case there is a charge an enquiry should be held. Without enquiry, it cannot be ordered that his past services are forfeited. As such, the order dt. 1-5-1986 is not a good order in law. He should have been given opportunity and after enquiry only, it can be ordered that his past services are forfeited and he was taken as fresh entrant. Later notices, when he was taken as a fresh entrant are meaningless as he has completed 240 days prior to forfeiture of his past services. Forfeiture of his past services is not good in law. He has completed 240 days prior to that and in view of JT-2002 (SC) 238, his services cannot be terminated or his past services cannot be forfeited without paying his compensation. No enquiry was held and he has completed 240 days prior to the charge levelled against him. As such, a proper enquiry should be held and the charge is frivolous one. The charge is simply of having scrap of one bottle. That does not appear to be a grave charge on which his past services can be forfeited.

In view of the foregoing discussions. I am of the considered view that forfeiture of his past services is not good in law as no chargesheet has been served and no enquiry has been made, so he cannot be taken as a fresh entrant. In case he has completed 240 days then a proper notice of 30 days should be given and if he does not explain within 30 days, then only any action could be taken against him. In this case, proper notice has not been given. As such, the workman deserved to be reinstated. The matter relates to 86 but the case has been filed in 1994 so there is delay and laches on the part of the employee and he was found absent. As such, he is not entitled to get any back wages but he is entitled to be reinstated w.e.f. 4-11-1986.

The reference is replied thus :—

The action of Chairman of Delhi Milk Scheme in terminating the services of Shri Harinder Singh son of Shri Dharam Vir Singh is not justified. The workman deserves to be reinstated from 4-11-1986 without any back wages. In case he is not reinstated w.e.f. 4-11-1986 within one month after publication of the award, the workman applicant will get full back wages from the date of the award.

The award is given accordingly.

Dt. 20-8-2004

R.N. RAI, Presiding Officer

नई दिल्ली, 25 अगस्त, 2004

का. आ. 2341.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केन्टोनमेन्ट बोर्ड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण

नं. II, नई दिल्ली के पंचाट (संदर्भ संख्या 4/94) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-8-2004 को प्राप्त हुआ था।

[सं० एल-13012/8/92-आईआर (डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 25th August, 2004

S.O. 2341.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 4/94) of the Central Govt. Industrial Tribunal/Labour Court No. II, New Delhi now as shown in the Annexure in the Industrial Dispute between the Employees in relation to the management of Cantt. Board and their workmen, which was received by the Central Government on 25-8-2004.

[No L-13012/8/92-IR (DU)]

KULDIP RAI VERMA, Desk officer

ANNEXURE

**BEFORE THE PRESIDING OFFICER: CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT-II, RAJENDRA BHAWAN,
GROUND FLOOR, RAJENDRA PLACE,
NEW DELHI**

R.N. RAI, Presiding Officer

I. D. No. 4/94

IN THE MATTER OF :

ZAKIR HUSAIN

VERSUS

CANTT. BOARD, U.P.

AWARD

The Ministry of Labour by its letter No. L-13012/8/92/IR (DU) Central Government dt. 16-12-1993 has referred the following point for adjudication.

The point runs as hereunder :—

“Whether the action of the management of Cantonment Board Meerut in terminating the services of Sh. Zakir Husain S/o Sh. Baboo Jamshed, Beldar w.e.f. 22-3-86 is legal and justified? If not, what relief the workman is entitled to.”

The claimant has filed statement of claim. In the statement of claim, it has been stated that the petitioner workman who belongs to the poor family of Ex-serviceman stricken by extreme poverty, backwardness and illiteracy was appointed as Labour in the Cantonment Board Meerut

Cantt. in March, 1985 to support his parents and his family in those hard days of financial crises.

That the workman continued his services upto 21-3-86 and unfortunately his services were terminated after completion of more than one year and more than 240 working days verbally w.e.f. 22-3-86. A photostat Copy of the statement of the work done is enclosed herewith for kind perusal as Annexure A.

The services of the workman was terminated without any prior notice and no pay or any sort of compensation was paid to the workman and the provisions of Industrial Dispute Act, 1947 were deliberately and wilfully violated, with the only intention to exploit the workman. That a seniority list of 210 workmen was prepared by the cantonment board Meerut Cantt. Meerut with the sole intention to appoint the workman according to the merit of the workman.

That fortunately his name appeared in the list at Serial No. 2 for continuance and further subsequent employment in the Cantt. Board, Meerut.

That the appointment of seven workmen mentioned in the viz. at Serial Nos. 20, 22, 80, 83, 121, 181, 208 viz. Sh. Rajpal son of Sh. Babu Lal at Serial No. 20, Sh. Satpal Singh son of Sh. Cahdda Singh at Serial No. 22, Sh. Sarvejeet Singh son of Sh. Archar Singh at Serial No. 80 Sh. Jagdish Prasad son of Sh. Badri at Serial No. 83, Sh. Dalip Singh son of Sh. Madho Ram at Serial No. 121, Sh. Jammu son of Sh. Shariff Mirza at Serial No. 181 Sh. Azad Pal Singh son of Sh. Babu at Serial No. 208 attached herewith as annexed 'B' were made but the workman was not re-appointed.

That it is clearly evident that discriminatory treatment was meted out to the workman and he was denied the re-appointment specially when he was listed at Serial No. 2 of the list. That being aggrieved the workman knocked the doors of Hon'ble Asstt. Labour Commissioner (Central) Dehradun on 8th May, 1991 for his re-instatement but all proved in vain and he was not re-employed. (Copy of the application dated 8th May, 1991 is attached herewith as annexure 'C' for kind perusal of Presiding Officer.

That at this juncture, it is extremely relevant to place on record before the Hon'ble Tribunal that there are abundance of work lying vacant in the cantonment Board Meerut Cantt. in various Sections/Branches which could very easily be filled by the workman for which the seniority list was prepared and the appointments were made purely on discriminatory basis.

The impugned order of termination dated 21st March, 1986 unlawfully terminating the services of the petitioner workman is patently untenable in law and liable to be struck down with consequent relief of re-instatement with continuity of service and back wages in favour of the

petitioner workman. The impugned order of termination dated 21st March, 1986 simpliciter so as to deprive the poor workman of his legal rights in the matter of employment is patently punitive, mala fide and arbitrary, besides being in contravention of the time honoured principles of natural Justice.

The petitioner workman respectfully submits that the impugned order of termination has patently violated the provisions of constitution of India besides being patently mala fide and arbitrary. It is respectfully submitted that the impugned order of termination dated 21st March, 1986 is violative of the fundamental rights of the articles of the constitution of India for the reasons that the respondent employer has chosen to single out the petitioner for the purpose of the aforesaid mala fide and punitive action for very obvious reasons of 'Discrimination'.

The instances that the workman mentioned serial Nos. 20, 22, 80, 83, 121 and 181 of the seniority list were re-employed without any regard to the merit of the list wherein the name of the petitioner workman stands at Serial No. 2. The respondent employer has shown a favour which was denied by the petitioner workman and the petitioner workman has not so far been even reemployed.

It is respectfully submitted that the impugned order of termination dated 21-3-86 is otherwise untenable in law being patently mala fide and arbitrary in violation of fundamental rights of the constitution of India, besides being in patent contravention of the principles of Natural justice, thus liable to be set aside with appropriate directions directing the respondent/employer to reinstate the petitioner workman in service with continuity of service and back wages.

The management/respondent has filed WS. In the WS it has been submitted that Sh. Zakir Hussain was engaged as Labour on daily wages in the month of April 1985. It is submitted that he had worked on daily wages as per detail in the Muster Roll from April 1985 to Nov. 1985 for total 197 days. A month wise detail of working of the workman is attached as Annexure 'A'. The detail given by the workman in statement (Annexure 'A') to his written statement are wrong and false.

It is submitted that the allegations made therein are wrong and false. He was engaged on daily wages from April 1985 to Nov. 1985 as and when required as such there was no occasion and requirement and necessity to issue prior notice and he is not entitled to any compensation whatsoever under the law. Question of violation of provisions of ID Act, 1947 does not arise at all.

It is submitted that he worked upto Nov. 1985 only as daily paid employee and not worked in Jan. 86, moreover the seniority list, if any does not show that he was working in Cantt. Board in Jan. 1986 and it can not make him an

employee. As per muster roll the workman has worked only upto Nov. 1985 and paid wages only upto Nov. 1985 as payable to him. He has not worked in Dec. 1985 onwards and has not been paid wages after Nov. 85 allegations contrary to this are wrong, false and incorrect.

It is also stated that the question of the workman being re-appointed is not a case as he was not working after Nov. 85 and had not completed 240 days continuous service in a year. The persons who have been appointed in Cantt. Board had completed 240 days service to their credit and were more senior to the workman. He was not in service after Nov. 1985 and he has not completed 240 days service in a year. He had no right of re-appointment and appointment or re-appointment is neither subject matter of Industrial Dispute nor of the issue in reference.

Moreover the workman has worked only for 197 days on daily wages. Thus has not attained the status of workman. There are so many workers in the list who have worked for more than 240 days. Appointment and re-appointment is not Industrial Dispute. There is no question of any discrimination at all. It is submitted that there is no termination of service w.e.f. or dated 22-3-86. There is not Industrial Dispute at all.

There is no order of termination whatsoever and the workman is indulging in flimsy grounds. (A) to (E) mentioned in the written statement are not admitted and it is submitted that they are wild allegations and vague and have no basis. There is no termination of service w.e.f. 22-3-86 of the workman at all. That the Cantt Board Meerut is formed under Section 11 of the Cantonment Act, 1924 by the Central Govt. and it functions as per the provisions of the Cantt. Act, 1924 and does not fall within the definition of Industry.

That all the employees of the Cantt Board Meerut are appointed as per the provisions of Cantt. fund servants Rules, 1937 and work and function accordingly and they are applicable on them. That Sh. Zakir Hussain was not a permanent or temporary employee of the Cantt. Board Meerut and he is not covered in the definition of workman as defined in the Industrial Dispute Act, 1947.

Most of the paragraphs of statement of claim have been denied. Additional pleas have been taken.

The workman has filed rejoinder. In his rejoinder, he has reiterated the same facts.

Heard arguments from the side of the management and workman. It was submitted from the side of the workman that he has worked for 284 days from March, 1985 to March, 1986 and his name in the seniority list figures at Sl. No. 61 and it has been shown from 1-6-1986. The workman has not filed any certified copy of his working days. The management has given certified copies.

According to the management, the workman has worked from April, 1985 to November, 1985. As such he has worked for 197 days only. The workman has filed affidavit of Vijay son of Shri Ram Singh and he has stated that he worked with him till March, 1986.

It was submitted from the side of the management that the workman has worked from April, 1985 to November, 1985. The substantial question is for how many months, the workman has worked. Whether he has worked from April, 1985 to November, 1985 or March, 1985 to March, 1986.

The management has filed payment register from March, 1985. In March, the name of the workman applicant has not been mentioned but there is cutting at Sl. No. 13. He has worked in April, 1985 and his name has been entered on Sl. No. 13. The workman has filed payment register of January, 1986. In January, 1986, the workman has worked and his name has been mentioned in the register. It is a notarial paper and this paper has not been denied by the Management. This paper shows that the workman applicant has worked in January, 1986 whereas the contention of the management is that he has worked from April, 1985 to November, 1985. The management has not filed payment register but the photography has been certified by notary and it indicates that the workman at least from April, 1985 to January, 1986 whereas the version of the management is that the applicant worked from April, 1985 to November, 1985 but the payment register of January, 1986 establishes the fact that he has worked in January also. As such, affidavit of the management and the certificate of the management becomes false in view of the photostat papers certified by notary filed on the record. It is the duty of the management to produce the entire payment register but the original register has not been filed. As such, adverse inference can be drawn that he has worked from March, 1985 to March, 1986. The management has concealed that register. However, the workman has filed photocopy of the register certified by the Notary. The certificate of the management that he has worked from April, 1985 to November, 1985 also becomes false in view of the photocopy of the payment register in January, 1986. In the circumstances, I am of the considered view that the version of the workman is to be believed as the certificate and the affidavit of the management appear to be false.

The workman is a manual labourer and he has filed the case after a long lapse of time. There is delay and laches on the part of the workman so the workman is not entitled to get any back wages. He is entitled to be reinstated from 22-3-1986 without any back wages.

It was also submitted from the side of the management that the cantonment board is not an industry. It discharges sovereign function.

In view of the judgement of the Hon'ble Supreme Court in Bangalore Water Supply, the Cantonment Board, U.P. is an industry. The workman are appointed by the Cantonment Board. Payment is made to them by the the Cantonment Board and they work under the control of the cantonment board. They do not hold any civil post. They are not appointed by the State Government or Central Government but they are appointed by the Board itself. As such, the Cantonment Board is an industry and this tribunal has got jurisdiction to adjudicate upon the matter. The workman do not discharge sovereign function.

The reference is replied thus :—

The action of the management of Cantonment Board Meerut in terminating the services of Sh. Zakir Hussain. S/o Sh. Baboo Jamshed, Beldar w.e.f. 22-3-86 is neither legal nor justified. The workman applicant deserves to be reinstated w.e.f. 22-3-86 without any back wages. In case, the workman is not reinstated during one month from publication of the award, he will be entitled to get an interest of 10% on the back wages due from 22-3-1986.

The award is given accordingly.

Dt. 16-8-2004

R.N. RAI, Presiding Officer

नई दिल्ली, 25 अगस्त, 2004

का.० आ.० 2342.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नेशनल जूलॉजिकल पार्क के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. II, नई दिल्ली के पंचाट (संदर्भ संख्या 102/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-8-2004 को प्राप्त हुआ था।

[सं० एल-42011/79/95-आई०आर० (डी०यू०)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 25th August, 2004

S.O. 2342.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 102/96) of the Central Govt. Indus. Tribunal/Labour Court No. II, New Delhi as shown in the Annexure in the Industrial Dispute between the employer in relation to the management of National Zoological Park and their workmen, which was received by the Central Government on 25-8-2004.

[No. L-42011/79/95-IR, (DU)]

KULDEEP RAI VERMA, Desk Officer

ANNEXURE

**BEFORE THE PRESIDING OFFICER: CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL: CUM
LABOUR COURT-II, RAJENDRA BHAWAN,
GROUND FLOOR, RAJENDRA PLACE,
NEW DELHI**

I. D. No. 102/96

Presiding Officer : R.N. RAI

IN THE MATTER OF :

Sh. Dalip Kumar & Others

VERSUS

National Zoological Park

AWARD

The Ministry of Labour by its letter No. L-42011/79/95/IR (DU) Central Government Dt. 31-09-1996 has referred the following point for adjudication.

The point runs as hereunder :—

“Whether the action of the management of in not giving pay scale of Rs. 210-290 w.e.f. 1-9-73 and pay scale of 810-1150 w.e.f. 1-1-86 and the corresponding allowances w.e.f. 1-4-81 to the workmen (as per list attached) is justified? If not, to what relief the workmen are entitled to.”

The list of 54 Mali's and 2 Cooks has been filed with the statement of claim. In the statement of claim, it has been stated that the workmen from Sl.No. 1 to 54 have been performing the duties of Mali's and the workmen at Sl. No. 55 and 56 have been performing the duties of cook. That the workmen have been getting the pay scales as recommended by the Central Pay Commissions for Central Govt. employees from time to time.

That all the workmen were given the pay scale of third pay commission in the grade of Rs. 196-232 w.e.f. 1-1-73 and subsequently revised to Rs. 750-940 w.e.f. 1-1-86 as per recommendations of fourth pay commission. That similarly placed workers of CPWD are also getting pay on National basis and the arrears of wages were also paid w.e.f. 1-4-81 onwards and in the pay scale of Rs. 210-290 subsequently revised to Rs. 800-1150 w.e.f. 1-1-86.

That proper pay scales were not given by the Central Govt. to the CPWD workers an agreement was reached between the management of CPWD and its workmen through CPWD mazdoor union for recategorisation/reclassification of the work charged and regular classified staff of CPWD as the same duties and responsibilities were performed by them.

That the arbitrators had reclassified and recategorised the work of Mali and cook being an unskilled workmen to

the semi skilled workmen in CPWD and similarly the third pay commission and wrongly classified the status of Mali and cook working in the establishment of National Zoological Park as unskilled workmen so the status of Mali and cook working in the establishment of National Zoological Park have to be changed at par with the Mali or cook of CPWD.

That the workmen of National Zoological Park are performing more arduous duties as their counterparts in the CPWD are performing. That both the categories of workmen are 'industrial' workmen of the Central Govt. and both were given pay scale as per recommendation of the Central Pay Commission for Central Govt. employees from time to time.

That Central Public Works Department, Govt. of India has accepted the reclassification/recategorisation of Mali and cook as per arbitration award 1988 and the same was implemented by them vide O.M. No. 22-9-93 EC.X-Dated 20-12-93 annexed as Annexure-A with this application. That after the implementation of the said arbitration award the pay scale of Mali and cook were revised w.e.f. 1-1-73 on National basis and the arrears of wages also paid w.e.f. 1-4-81 onwards and in the pay scale of Rs. 210-290 subsequently revised to Rs. 800-1150 w.e.f. 1-1-86. That the workmen of National Zoological Park were discriminated in the payment of wages in the pay scale of Rs. 210-290 w.e.f. 1-1-73 and Rs. 800-1150 w.e.f. 1-1-86.

That as per Industry cum region workmen of National Zoological Park are also entitled to the wages in the pay scale of Rs. 210-290 w.e.f. 1-1-73 and the arrears in the said pay scale w.e.f. 1-4-81. That the Hon'ble Supreme Court in its judgment in the matter of Randhir Singh Vs. Union of India has recognised the same pay scale in the same category working in different departments of the Govt. so the workmen of National Zoological Park are also entitled to the same pay scale as their counterparts have been getting in the CPWD and both the department are functioning directly under the control of Central Govt. reported in 1982 (42) FLR 299.

That as per the recent judgement of Hon'ble Supreme Court in the matter of MCD Vs Ganesk Razak and others held that the workmen can demand equal pay for equal work and the dispute can be adjudicated upon under Section 10(1) of the I.D. Act. That the workmen are legally entitled to the same facilities working under the same employer i.e. Central Govt. on the analogy of equal pay for equal work. That the workmen are entitled to get their pay scale of Rs. 210-290 w.e.f. 1-1-73 on National basis and the arrears of wages w.e.f. 1-4-81 and in the pay scale of Rs. 800-1150 as per their counterparts working in CPWD/PWD.

It is, therefore respectfully prayed that this Hon'ble Tribunal may be pleased to :

Award pay scale of Rs. 210-290 w.e.f. 1-1-73 notionally and the corresponding allowance w.e.f. 1-4-81 at par with the counterparts working in CPWD/PWD and pay scale of Rs. 810-1150 w.e.f. 1-1-86 to the workmen of National Zoological Park as per list attached with the schedule. Award/order which this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.

The management/respondent has filed W.S. In the WS it has been stated that the National Zoological Park, hereinafter referred as 'NZN' is a Govt. of India organisation setup by the Ministry of Environment and Forests for conservation and breeding of rare fauna, to educate and provide recreation for the visiting public. It is not an Industry therefore the provision of Industrial Dispute Act, 1947 are not applicable for the Zoological Park at all. Hence the petition needs to be rejected. All the group 'D' employees in the National Zoological Park are governed by the pay scale as recommended by the Central Pay Commission for Central Government employees from time to time.

The National Zoological Park has neither any concern with the scale of pay of C.P.W.D. being governed under another Ministry of Urban and Housing nor any relevancy with the nature of work. Hence the service condition of malis at National Zoological Park is governed by the Ministry of Environment and Forests and their service conditions pay scales etc. are based on the recommendations of the Central Pay Commission and its acceptance after due consideration. Therefore the CPWD scale of pay is neither applicable to NZN nor the same has any relevancy and connection with NZN.

It is stated that in the present case claimant seeks revision of pay scale w.e.f. 1-1-73 and the allowance w.e.f. 1-4-81 after a passage of two decades. As such the claim is time barred. It is settled law that it is not in the interest of justice to unsettle a settled position. As such the present reference is liable to be rejected. In the present case, the pay scale allowed to malis and cooks are based on the recommendations made by the pay commissions accepted as well as implemented by the Central Government. There is absolutely no justification to compare with the employees of CPWD when they are not similarly placed.

All the group 'D' employees of NZN have been given the scale of pay as recommended by the IIIrd pay commission in the grade of Rs. 196-332 w.e.f. 1-1-73 subsequently revised to Rs. 750-940 w.e.f. 1-1-86 as per the recommendation of central 4th pay commission. As has already been submitted Central Pay Commission is the competent authority to recommended the scale of pay for the Central Govt. employees. There is no such scale of pay of Rs. 210-290 w.e.f. 1973 and scale of pay of Rs. 810-1150 w.e.f. 1-1-86 applicable to the National Zoological Park. Therefore it has no concern with NZN The said scale of pay is not applicable to the employees of National

Zoological Park. Therefore the workmen are not entitled for the above scale of pay.

The name of fifty-six employees referred to in the petition had already been granted the scale of pay Rs. 196-232 w.e.f. 1-1-73 and subsequently revised to Rs. 750-940 w.e.f. 1-1-86 as per the recommendation of 3rd and 4th Pay Commission. It is stated that the recommendation of the 5th Central Pay Commission has to be accepted by the Central Govt. and then it would also be extended to the employees of the National Zoological Park. It is further submitted that the present reference is liable to be rejected. Para 3 being matter of records requires no reply.

Contents of Para 4 are matter of records. The employees have been granted the scale of pay as recommended by the Central Pay Commission for Central Govt. employees from time to time. Contents of Para 5 are not disputed.

The National Zoological Parks objective is different and has no similarity with the nature of work of CPWD. In fact both the organisation have been setup with the different objectives and different mode of jobs and duties responsibilities etc. Therefore it has no similarities in any form. A bare perusal of OM dt. 20-12-93 annexed by the claimant along with their claim petition would show that CPWD & NZP are not comparable in any respect.

The CPWD has no concern with the work and nature of National Zoological Park. The organisations are different and working patterns and objectives are different. The quality of work, functions duties and responsibilities of these organisation vary and as such the concept of equal pay for equal work cannot be invoked. It is stated that the factum of agreement entered in to between CPWD workers and Central Govt. has no relevance in the present case as no such agreement was entered between the parties at any point of time.

It is strongly denied that the Third Pay Commission had wrongly classified the status of malis and cooks of NZP as alleged. The malis are mainly entrusted with the work of looking after the lawns, watering the plants and looking after the shrubs's and trees. This work does not need any special skill similarly the cooks are also charged with responsibilities to cook feeds for the animals only maintained in captivity. They cannot be classified as skilled worker as this does not need any specialisation or special skill.

It is strongly denied that the employees of NZP are performing arduous duties, as alleged. The prime objective of NZP is to maintain and keep the endangered animals in natural habitat and their captive breeding. The horticulture work being performed by malis at NZP is to keep the adjoin area of animal enclosure clean only.

It is denied that NZP is an industry. The National Zoological Park is a Government of India organisation. The scale of pay for the employees have been allowed as per the recommendation of Central Pay Commission. It has no parity with the work of CPWD. The zoo is not an industry therefore provisions of "Industrial Dispute Act" are not applicable.

Since the National Zoological Park is a Govt. of India undertaking primarily with conservation of endangered wild animals and their scale of pay has been allowed as per the Central Pay Commission recommendation. The revision of pay scale by CPWD are neither applicable nor comparable with the National Zoological Park.

The concept of Industry-cum-region is not applicable in the facts and circumstances of the present case. The CPWD is a nodal agency of Govt. of India looking after all the construction as well as maintenances of Govt. installations. The National Zoological Park is a subordinate office under Ministry of Environment and Forest working with the prime objective of conservation of endangered wild species conduct research and educating public for the cause of conservation of our wild heritage.

It is respectfully submitted that the judgment cited is not applicable in the facts and circumstances of the present case. The National Zoological Park is a different organisation than the CPWD besides both have different type of function and requirement and therefore CPWD scale of pay, nature of work is not applicable to the National Zoological Park.

The National Zoological Park is not an Industry therefore the Industrial Dispute Act is not applicable for the National Zoological Park. It is also denied that the employees of NZP are entitled to same facilities as alleged. The concept of equal pay for equal work is not applicable in the facts and circumstances of the present case.

Most of the paragraphs of the statement of claim have been denied in the written statement and some additional pleas have also been taken.

The applicants have filed rejoinder. In their rejoinder, they have reiterated the averments of their statement of claim and have stated that they should get pay equal to the employees of CPWD as they are discharging the same duties.

The evidence of the workmen and management has been taken. They have been cross examined.

Heard argument from both the sides and perused the papers on the record. It was submitted from the side of the workmen that they are working as Mali in the National Zoological Park and two cooks have also filed statement of claim and they have claimed that the similarly placed workers of CPWD are getting pay on national basis and

arrears of wages were also paid w.e.f. 1-4-81 onwards and their pay scales have been revised.

Malis and Cooks have been re-classified as semi-skilled workmen in the CPWD and as such, the Mali and Cook of National Zoological Park should also be re-classified on the same scale and they should get the salary equivalent to the salary of the Mali and the Cook of the CPWD. The pay scales of Mali and Cook were revised w.e.f. 1-1-1973 on national basis and the arrears of wages were also paid w.e.f. 1-4-1981 onwards. The workmen of Zoological Park have been discriminated in the payment of wages in the pay scales of Rs. 210-290 w.e.f. 1-1-1973 and Rs. 800-1150 w.e.f. 1-1-1986. It was submitted from the side of the management that the workmen are not entitled to get equivalent pay to the employees placed in the similar condition in the CPWD. The Malis do not discharge any skilled work. The National Zoological Park is not an industry and no Pay Commission has been set up to fix the pay scales of the workmen. The workmen of the National Zoological Park discharge different duties. They have to take care of the park and the cooks prepare meals for animals and not for men. It was submitted from the side of the workmen that 5th Pay Commission has re-classified and fixed the pay but no copy of the 5th Pay Commission has been filed with the record.

It has been submitted from the side of the management that the National Zoological Park has no concern with the functioning and scale of pay of CPWD. Therefore, the CPWD scale of pay has no relevance with the National Zoological Park. In the National Zoological Park, the workmen take care of animals, therefore, the National Zoological Park is not an industrial establishment. All employees are covered under the provision of scale of pay of the 5th Central Pay Commission recommendations and has no relevancy and connection in any form with regard to industrial dispute.

The Hon'ble High Court of Madras has already declared that Zoos are not an industry. National Zoological Park is covered by the provision of Central Pay Commission's recommendations set up by the Government of India and the 5th Pay Commission's recommendations have been complied with and the management has made payments according to the 5th Pay Commission recommendations. As such the workmen of CPWD and that of the management are on different footings. The pay scales of the workmen of Zoological Park has been revised by the 5th Pay Commission and they had been paid accordingly. As such, no question arises regarding payment on the criteria of CPWD workers. The CPWD workers have been paid according to the agreement but there is no such agreement between the workmen and the management. The workmen applicants are governed by the recommendations of the Central Pay Commission.

So far as the question of industry is concerned, the workmen applicants do not hold civil posts and according to Bangalore Water Supply judgment of the Hon'ble Supreme Court, the workmen are under the control of the authorities of Zoological Park and they receive payment from them so Zoological Park is an industry. So far as the other question is concerned, the workmen applicants have already been paid according to the recommendations of the 5th Pay Commission and there is no other agreement. They have filed this case in 1996 and they are claiming revised wages from 1973. Since there is no agreement between the workmen and the management and they have been paid according to the recommendations of the 5th Pay Commission so their demand is not genuine. The law cited by the workmen and the management is not applicable in the facts and circumstances of this case.

The reference is replied thus :—

The action of the management in not giving pay scale of Rs. 210-290 w.e.f. 1-9-73 and pay scale of Rs. 810-1150 w.e.f. 1-1-86 and the corresponding allowances w.e.f. 1-4-81 to the workmen (as per list attached) is justified. The workmen do not deserve to get any relief as prayed for.

The award is given accordingly.

Dt. 24-8-2004

R. N. RAI, Presiding Officer

नई दिल्ली, 25 अगस्त, 2004

का. आ. 2343.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बदरपुर थर्मल पावर स्टेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. II, नई दिल्ली के पंचाट (संदर्भ संख्या 54/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-8-2004 को प्राप्त हुआ था।

[सं० एल-42011/13/93-आई.आर. (डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 25th August, 2004

S.O. 2343.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 54/93) of the Central Govt. Indus. Tribunal/Labour Court No. II, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Badarpur Thermal Power Station and their workmen, which was received by the Central Government on 25-8-2004.

[No. L-42011/13/93-IR (DU)]

KULDIP RAI VERMA, Desk officer

ANNEXURE

**BEFORE THE PRESIDING OFFICER: CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT-II, RAJENDRA BHAWAN,
GROUND FLOOR, RAJENDRA PLACE,
NEW DELHI**

Presiding Officer : R.N. RAI

I. D. No. 54/93

IN THE MATTER OF :

General Secy.

Versus

BTPS

AWARD

The Ministry of Labour by its letter No. L-42011/13/93/IR (DU) Central Government dt. 12-08-1993 has referred the following point for adjudication.

The points runs as hereunder :—

“Whether the General Manager BTPS, New Delhi is justified in not extending the facility of appointment on compassionate grounds to the dependents of employees who die during the period of service, taking into account the qualifications and fitness of the dependent to the particular post? If not, what relief the workmen were entitled to.”

The Gen. Secy. of the BPE & WU has filed a statement of claim. It has been stated in the statement of claim that the Badarpur Power Engineers and Workers Union (herein- after referred as BPE & WU) is a union registered under Trade Act, 1926 and the main objects of the union is to catre the needs of its members and to promote the industrial peace and harmony. Besides it, the other motto of the union is to curb the exploitation of the workers working under the management of BTPS and to make them aware of their rights and duties.

The management of BTPS has adopted unreasonable and unjustified attitude in denying the facility of appointment on compassionate grounds to the dependents of the deceased employees of BTPS (hereinafter referred as BTPS), who died during the period of service. Besides it, the management also adopted the policy of nepotism and favouritism in giving such appointments. This has led the frustration of employees in general and members of the union in paticular. Considering the frustration of employees and members, the union sent a demand notice on 19-12-1992 to the management and a copy of the same was sent to Assistant Labour Commissioner (Central), Regional Labour Commissioner (Central) and Chief Labour Commissioner (Central) for intervention in tne matter.

In pursuance to the demand notice dated 19-12-1992, Assistant Labour Commissioner (Central) invoked his jurisdiction under Section 12 of the Industrial Dispute Act and set in motion the conciliation proceedings. However, ossified attitude of the management made it difficult to bring about an amicable settlement and therefore, the conciliation proceedings culminated into failure.

The appropriate Govt. after considering the report of the conciliation machinery referred the matter to this Hon'ble Tribunal to adjudicate the matter.

It has been further stated that the BTPS is an establishment owned by Central Govt. and employees were appointed by it for the operation and maintenance of the power station. However, the Central Govt. transferred the management and control of BTPS to NTPC w.e.f. 1-4-78 for a period of 10 years by an agreement dated 12-4-78 between the Central Govt. and the NTPC, which was extended for another five years from time to time which is going to expire on 31-3-94.

The Central Govt. while transferring the managing control made it clear to the NTPC that terms and conditions of employment of BTPS employees should not be interior to or less favourable as already enjoyed by them as on 31-3-1978. The NTPC agreed for the same.

That the facility of appointment on compassionate grounds was available to the employees of BTPS under the direct control of the Central Govt. and the same was extended by the NTPC to the BTPS employees.

That the management suddenly stopped this facility and the employees agitated over the issue.

It has been stated that tripartite meeting among the representatives of the Central Govt., NTPC and employees were held in the Ministry of Energy, Dept. of Power, on 7-12-84 and 11-12-84 and Secy. (Power) Govt. of India decided and agreed as follows :—

“The facility of appointment on compassionate grounds of dependents of the employees of BTPS which is presently available for death on duty will extend for death due to any reason during the period of service, considering the qualification and vacancies.”

The true copies of records of meeting on 7-12-1984 and 11-12-1984 are filed herewith and marked as annexure 'A' and 'B' respectively.

That in pursuance to the above decision of Central Govt. the management of BTPS issued a circular No. BTPS/04/Estt./59/84/7390 dated 21st December, 1984 stating that:

“To introduce the facility of appointment on compassionate grounds of dependents of employees of BTPS which is presently available for death on duty as also to death due to any reason during the period of service

considering qualification and vacancies. Details of the scheme is being worked out for issue shortly. The true copy of circular dated 21st Decemcbr, 1984 is filed herewith and marked as annexure 'C'. But the scheme was never worked out and issued."

It has been stated that in the meanwhile several employees died in harness during their service, leaving their family in immediate need of Assistance, as there is no earning members in the family. The dependents of these employees applied for appointment on compassionate grounds, but of no avail. The management summarily rejected their application without assigning any reason. Even the widows/dependents of sweepers were denied the appointment as no qualification is required for their job of sweeping. Instead work of sweeping and cleaning are being given on contract in various sections of BTPS. There are 60 applications pending for appointment on compassionate grounds.

The cases of employment on compassionate ground, which are in the knowledge of the union are enclosed herewith and marked as Annexure 'D'.

It has been stated that power station is a hazardous industry and the employees are required to work in polluted environment and sound level far exceeds the number of times to the normal level and thus employees suffer from various diseases and in some cases an employee dies leaving his family in great difficulty.

That the employees of BTPS are entitled to get the facility of appointment on compassionate grounds to their dependents in case of their death during the period of service as a service condition, past practices and the orders of the Deptt. of Power dated 11-12-1984 as well as circular issued by the NTPC on 21-12-1984.

That the management should provide employment to the dependents of deceased employees on compassionate grounds in a similar manner as given on the death of employees on duty and in accordance to the provisions and guidelines of the Govt. in the matter.

That in certain cases the employees who died on duty due to accident or heart attack etc., their dependents have also not been provided employment. The following employees died on duty :

1. Sh. Vishwanath
2. Sh. Amrick Singh
3. Sh. D.P. Sharma

Sh. Vishwanath died due to accident on duty and Sh. Amrick Singh died due to heart attack when he was forcibly detained for double duty in night shift despite he was not feeling well and requested to relieve him from duty at end of his shift.

That in the absence of not extending the facility of employment of the dependents of deceased employees who died in harness or during the period of service, their family suffers a great hardship. The employees who served the organisation with full devotion, his/her dependent should be given employment on compassionate and humanitarian grounds, when there is no other earning member in the family. This facility is being provided in Govt. Deptt., Public Sector Organisations, Corporations etc., and there is no justification in denying this facility to the BTPS employees.

It has been stated that under the circumstances, it is therefore prayed that this Hon'ble Tribunal may kindly be pleased to :—

Pass the award in favour of the union directing the management of BTPS to provide the facility of appointment on compassionate grounds to the dependents of the employees who died during the period of service taking into account the qualifications and fitness of the dependents to the particular post.

Pass any other order which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case in the interest of justice.

The management has filed the WS. In the WS it has been stated that the reference as made is bad, without justification and liable to be quashed, *inter-alia* on the following grounds :—

Because the question as to whom to employ, when to employ and all other matter incidental thereto are matters, within management's function. No dispute much less an industrial dispute can be raised in respect of item falling within the management's function. Neither any union nor the workmen have any right and/or locus standi to raise any such dispute hence no dispute much less an industrial dispute could arise. No reference could be made and any proceedings under the provisions of Industrial Disputes Act, 1947 (hereinafter called Act) could be entertained.

Because the management and the workmen had arrived at a settlement dated 1-8-1989, which settlement is still in operation. Because the scheme of compassionate employment by way of a valid settlement is to operate within the ambit of its terms and conditions and its scope cannot be enlarged by way of adjudication as upheld by various judgements of the Hon'ble Supreme Court.

Because in any case, the alleged dispute is not validly and much less legally espoused. That the dispute couldn't be raised and in any case the same was and is not an Industrial Dispute as defined in Section 2(k) of the Act, therefore the Govt. had no jurisdiction to make any reference u/s 10 of the Act and this learned Tribunal has no jurisdiction to entertain the present proceedings.

It has been stated that the said allegations are vague, lack in particulars without any basis and are liable to be ignored. It is denied that there is any frustration amongst the employees of the establishment and/or there was and / or is any cause for any such frustration.

It is admitted that a demand notice dated 19-12-1992 was received by the management. It is submitted that the question of employment on compassionate grounds already is covered by a settlement dated 1-8-1989 which settlement was arrived at during the course of conciliation proceedings. During the operation of said settlement no demand could have been made by the workman and /or the union and no reference could have been made. Under the circumstances the reference is bad and is liable to be quashed. Moreover the question of employment and/or the qualification of a job is a management's function and no dispute much less an industrial dispute can be raised thereto.

The alleged dispute is not industrial dispute as defined in Section 2(K) of the Act. The reference therefore, is without jurisdiction and is liable to be quashed. The Government could not have made and had no power to make any such reference.

It has been stated that it is submitted that the conciliation officer initiated conciliation proceedings. It may be mentioned that in the conciliation proceedings, the management had objected to the said proceedings and entertainment of the said alleged dispute. The management had submitted that no industrial dispute could arise and/or be raised and/or was entertainable.

It has been stated that the allegations have been made therein with to mislead this Hon'ble Tribunal and with the said object the relevant facts have been suppressed.

As submitted above, the employees working in BTPS, are employees of NTPC. Their terms and/or conditions of employment have been revised from time to time through settlements arrived at between the management and the workmen and/or the unions.

As a result of such revision(s) the terms and conditions of their earlier employment when BTPS was run by Central Electricity Authority ceased to exist and is not applicable. In view of the same, even if there was any conditions of employment on compassionate ground it ceased to exist.

It has been stated that among the other settlements, referred to above there was a settlement dated 1-8-1989, clause 4.5 of the said settlement which deals with employment on compassionate grounds is as under :—

“employment to one dependent of each workmen who is permanently disabled or dies as a

result of accident while on duty will continue to be provided as at present. Dependent for this purpose will mean spouse of the employee, his or her son or daughter of the employee or legally adopted son or daughter only”.

It is submitted that NTPC besides BTPS has other establishments and rules pertaining to employment on compassionate grounds and are uniform in all such establishments. There is no reason why a departure should be made from such rules.

It has been stated that in view of the settlement including settlement dt. 1-8-1989 there could be no question of any agitation amongst the employees. It is denied that the employees are agitated.

It has been stated that even according to the minutes of the tripartite meeting as well as circular dt. 21-12-1984 all such employments on compassionate grounds were subject to qualifications and availability of vacancies. BTPS is already over staffed and under the circumstances, the question of occurring of any vacancy in the said establishment could not and did not arise. No vacancy arose, which needed to be filled up and/or was filled up. No person even under the said minutes/circular had any right to claim an employment in BTPS merely because some employees had died. As mentioned above, BTPS is over staffed and no vacancy thus arose which was required to be filled in.

It may be mentioned that in this case set up by the union before the conciliation officer as well as in any statement of claim before this Hon'ble Tribunal, it is not the union's case that any new person had been employed by management in BTPS after the death of any employee. Without prejudice to what has been stated above the correctness of Annexure-D is not admitted. Without prejudice to that it is submitted the dependent of the employees referred to in Annexure-D did not possess the prescribed qualification and therefore, even there would have any vacancy such dependant(s) was/were not eligible for appointment.

It is denied that the employees are working in a polluted environment and/or that the sound level is excessive. The management is conscious and takes steps to keep the environment pollution free. Allegation made in Para-11 of the statement of claim, in any case is irrelevant as there is no allegation and there could be no such allegation as no employee had died on account of the sound level and/or environment of BTPS.

It is denied that the employees of BTPS are entitled to get facility of appointment of the dependents on compassionate grounds as claimed. It is submitted that a dependent has no right of such employment much less on any of the grounds referred to therein, to which the reply

has being given already and for the sake of brevity which are not being reproduced here.

If such dependents of the deceased employees are given a preferential right to employment, it will deprive other eligible and better candidates from employment which will prejudice not only the interests of the management but rights of other citizens.

It is denied that the dependent employees are entitled to employment in BTPS on the grounds and/or any of the grounds mentioned in para-13 of the Statement of Claim. The management has replied to the grounds, referred to para-13 above and for the sake of brevity, the management is not reproducing/repeating the same. The management craves leave to refer to its reply to the said grounds. It may be mentioned that BTPS is engaged in generation of electricity which is highly technical. Under the circumstances persons with requisite special skills and qualifications are the persons who are required and would be required as and when any vacancy arises and any recruitment is required to be made. In view of the nature of the industry as well as that it is commercial concern, death of an employee while during his employment with the management cannot *per se* be no ground to grant employment to his dependent(s). It is submitted that neither the rules of Government nor guidelines if any, prescribed by the Central Government are applicable to the management. The management has got its own terms and conditions of the employment and no modifications in the said terms and condition is required.

It is denied that the employees, referred to at Sl. 2 and 3 of para-14 of the Statement of Claim died in an accident during the course of their employment while on duty. The employee at Sl. No. 1 was a muster roll employee not covered under the scheme of compassionate employment as per the settlement. Without prejudice to what has been stated above the dependents of the said persons could not be employed as they did not possess the prescribed qualifications and there was no vacancy. The employment of the dependent(s) or an employee is subject to the fulfilling the conditions as laid down in rules of the management including settlement dt. 1-8-1989 referred to above.

It has been stated that as submitted above taking into consideration the nature of industry the fact that BTPS is already over staffed that it is a commercial concern that the rule regarding compassionate employment in BTPS are same or similar as prevalent in NTPC's other establishment(s) there is no need to change its present rules made in this regard.

It has been stated that the Government rules are not applicable to BTPS. Moreover Government cannot be compared with the commercial concern. The reference made to public sector organisations/corporations is vague and lack in material respects therefore the same is liable to be ignored. In any case reference to such undertaking/corporations is not relevant.

Most of the paras of Statement of Claim have been denied in the written statement and additional pleas have been taken.

Rejoinder has been filed by the union. In the rejoinder the averments of statement of claim have been reiterated. It has been asserted that there are provisions for compassionate appointment of dependents of the employees who died during duty or during service period.

Heard argument from both the sides and perused the papers on the record.

It was submitted from the side of the union that a meeting was convened by the Ministry of Energy on 11th December, 1984 wherein it was decided as under :—

“The facility of appointment on compassionate grounds of dependents of employees of Badarpur Thermal Power Station which is presently available for death on duty will extend for death due to any reason during the period of service, considering the qualifications and vacancies.”

As such according to the decision of the Ministry of Energy the facilities of appointment on compassionate grounds is to be extended to the dependents of the deceased employees during the duty period or service period. So this decision makes it clear that the dependents of the deceased workmen are to get appointment on compassionate ground whether the died during duty period or duty service period. As such it is clear that according to this decision of the Ministry of Energy one dependent of the deceased employee is to get employment on compassionate ground where the workman died during duty period or during its period of service.

It has been further submitted that the employees of the BTPS are Government employees and the management has transferred them to the BTPS. As such there initial appointments are in the Government service. The transfer of management will make no difference.

It was submitted from the side of the union that MW-1 has admitted in his cross-examination that the scheme for this purpose is being prepared and it will take 2 to 3 months. It has been admitted that the Ministry of Energy has issued letter dt. 11th December, 1984 and in that letter, it has been specifically mentioned that one dependent of the deceased employee who dies during duty period or during service period is entitled to get employment. As such, there is no question of preparation of scheme. In case, it has already been settled in Tripartite meeting that the facility of appointment to the dependents of the deceased employees is to be provided in case of death due to any reason. It was also submitted that the employees of the Government Department are getting this facility and the employees of the BTPS were previously the employees of the government department and this facility should also be provided to them.

That para 9 of circular dated 12-7-1985 reads as under :—

9. "Facility of appointment on compassionate grounds for employees of BTPS presently available for death on duty has been extended from 21-12-1984 to death for any reason during the period of service subject to qualifications and vacancies. One dependent of the deceased employee has already been appointed and posted at Company's Farakha Project."

From perusal of settlement in Tripartite meeting dt. 11-12-1984 and circular letter of para 9, it becomes quite explicit that the benefit of employment of one dependent of the deceased employee has been extended due to death for any reason i.e. the employee died during duty or during service period. The settlement of the tripartite meeting of December, 1984 and the circular letter of 1985 establish the fact that the management has admitted that one dependent of the deceased employee is to be given the benefit of compassionate appointment whether the workman died while on duty or during his service period.

It was submitted from the side of the management that the scheme is being worked out for this purpose and there is no scheme at present. The court has no jurisdiction as there is no settlement. The appointment on compassionate ground is not covered under Section 2 K of the ID Act, 1947. The court cannot adjudicate upon the matter as it is not in respect of discharge, dismissal, termination or retrenchment. The court has no jurisdiction to give decision regarding the compassionate appointment.

There is settlement in Tripartite meeting in December, 1984 and the Ministry of Energy has issued a letter providing the benefit of compassionate appointment and this letter has been issued after Tripartite meeting. As such, there is settlement between the workman and the management and that settlement can be enforced. As such, the Tribunal has jurisdiction to decide the point referred to. However, the appointment is to be made subject to the other qualifications. The Hon'ble APEX Court in ILJ page 308, 1996, has held that in case there is settlement it can be enforced. It is established fact that there is settlement in respect of compassionate appointment so this can be enforced by means of an award in view of the judgement of the Hon'ble Supreme Court. The impugned reference is not in excess of jurisdiction and is not bad in law and the matter comes within the purview of the ID Act, 1947 and the reference is good in law.

It was submitted from the side of the management that the management is already over staffed and there are no vacancies. In case, the management is over staffed, it

simply shows that illegal recruitments have been made for extraneous reasons. The workmen are getting superannuation and they are dying while on duty. In that case, there is no question of the management being over staffed.

My attention was drawn from the side of the management to 1978 (2) SCC 501 and AIR 1964 SCC 160 and 1973 (2) LLJ page 306 and AIR 1974 SCC 2089. I have gone through all the citations but these citations are not applicable in the facts and circumstances of this case as they are regarding Section 3 of Life Insurance Corporation and collective bargaining. As such, the citations of the management are absolutely not applicable in the facts and circumstances of the case.

It is explicit from the circulars referred to above that the facility has been extended to the dependents of the deceased who died due to any reason. The Hon'ble APEX Court in 2000 SCC page 767 has held in the matter of SAIL that the denial of compassionate appointment should be perceived as denial of social and economic justice. This direction has been given in the case of SAIL and BTPS is also such an undertaking, as such the judgement of Hon'ble APEX Court referred to above is fully applicable to BTPS also. The Hon'ble APEX Court has held that this benefit should be provided as a measure of social and economic justice, as such, the dependents of the deceased employee should not be deprived of this benevolent provision of the APEX Court and in every circumstance, one dependent of the deceased employee whether he died while on duty or during service period should be given appointment on compassionate ground subject to his qualification and fitness. The law cited by the management is not applicable in the present facts and circumstances of the case.

The reference is replied thus :—

The General Manager BTPS, New Delhi is not justified in not extending the facility of appointment on compassionate grounds to the dependents of employees who died during their period of service, taking into account the qualification and the fitness of the dependents to the particular post. One dependent of every deceased workman is entitled for compassionate appointment subject to qualifications and fitness prescribed on that behalf and it is further directed that within one month of the publication of the award, each and every case should be considered and appointment should be given.

The award is given accordingly.

Dt. 17-8-2004

R. N. RAI, Presiding Officer.

नई दिल्ली, 26 अगस्त, 2004

का. आ. 2344.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा०को०को० लि० के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II धनबाद के पंचाट (संदर्भ संख्या 247/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2004 को प्राप्त हुआ था।

[सं. एल-20012/54/99-आई.आर. (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 26th August, 2004

S.O. 2344.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 247/99) of the Central Govt. Industrial Tribunal/Labour-Court. II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workmen, which was received by the Central Government on 24-8-2004.

[No. L-20012/54/99-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL (NO.2) AT DHANBAD

PRESENT:

SHRI B. BISWAS, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 247 of 1999

PARTIES:

Employers in relation to the management of Govindpur Area of Mys. BCCL and their workman

APPEARANCES:

On behalf of the workman : None

On behalf of the employers : Mr. D. K. Verma,
Advocate

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 3rd July, 2004

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this

Tribunal for adjudication vide their order No. L-20012/54/99-IR (C-I), dated, the 4th June, 1999.

SCHEDULE

"Kya B.C.C.L. key pravandtantra dwara Karmkar late Mangra Munda key ashrita ko niyukti na diya jana nayaochit hai ? Yadi nahi to ukt ashrit kis rahat key patra hai ?"

2. The case of the petitioner /workman as per Written Statement submitted by her in brief is as follows :

She submitted that her husband late Mangra Munda was a permanent M/Loader of Block IV Kooridih Colliery under Govindpura Area III under the management since 1-9-73. His date of birth as recoded in his service records was 7-8-39. She submitted that in the year 1988 he was detected a heart patient and remained under treatment at Central Hospital Katras and Dhanbad and ultimately died on 7-10-92 at the age of 53 years. She submitted that at the time of his death he was very much in service but could not attend to his duty owing to his serious illness since 1-10-90.

She submitted that there was no other earning member in the family of the deceased husband and for which under provision of para 9.4.2 of N.C.W.A. IV she submitted representations to the management for her employment on compassionate ground being the widow of her deceased husband but to no effect and for which she raised an industrial dispute before the ALC(C) Dhanbad for conciliation which ultimately resulted reference to this Tribunal for adjudication.

She accordingly submitted prayer to pass award directing the management to provide employment to her on compassionate ground as per provision laid down in N.C.W.A.

3. Management on the contrary after filing Written Statement-cum-rejoinder have denied all the claims and allegations which the petitioner/workman asserted in the Written Statement submitted by her. They submitted that Mangra Munda though was a permanent workman of Block IV Area started remaining himself absent from duty w.e.f. January, 1990 without giving any information or getting the leave sanctioned. As his unauthorised absence amounted to misconduct a departmental proceeding was initiated against him and the Enquiry Officer in accordance with the principle of natural justice conducted domestic enquiry against him and submitted his report holding him guilty to the charge brought against him. Disciplinary authority considering the report and also considering all other aspects dismissed the concerned workman from his service w.e.f. 28-3-92. They submitted that against the said order of dismissal said workman Mangra Munda did not raise any industrial dispute. Thereafter he died on

7-10-92. They submitted that after a lapse of several years the petitioner has raised the present Industrial dispute for her employment being the dependent of late Mangra Munda. They submitted that there is no provision in N.C.W.A. for providing employment to the dependent of a dismissed worker and for which her claim finds no merit at all. Accordingly, they submitted prayer to pass award rejecting the claim of the petitioner/workman.

4. POINTS TO BE DECIDED

“Kya B.C.C.L. key pravandtantra dwara Karmkar late Mangra Munda key ashrita ko niyukti na diya jana nayaachit hai ? Yadi nahi to ukt ashrit kis rahat key patra hai ?”

5. FINDING WITH REASONS

It transpires from the record that the petitioner/workman inspite of getting ample opportunity did not consider necessary to come forward with a view to establish her claim. Accordingly management declined to adduce any evidence in support of their claim.

In such circumstances let it be considered how far the claim of the petitioner is justifiable and if so whether she is entitled to get any relief in view of her prayer. It is admitted fact that husband of the petitioner/workman was a permanent miner/loader at Block IV Kooridih colliery under Govindpur Area III. It transpires from the W.S. of the petitioner/workman that he got his appointment in that capacity on 1-9-73 and his date of birth as per service record was 7-8-39. These facts, however, the management did not deny categorically in their Written Statement.

It is the contention of the petitioner/workman that her husband was detected as heart patient in the year 1988 and for which he remained under treatment at Central Hospital Katras and Dhanbad and ultimately died on 7-10-92. It is admitted fact on the part of the worker that with effect from 1-1-90 her husband Mangra Munda could not attend to his duty owing to his serious illness. There is no dispute to hold that said Mangra Munda died on 7-10-92. The claim of the management on the contrary is that said Mangra Munda started absenting himself from duty with effect from January 1990 without prior permission or giving any intimation to the management and for which on the ground of committing misconduct disciplinary authority conducted domestic enquiry against him and as he was found guilty he was dismissed from his service with effect from 28-2-92. The petitioner in her Written Statement did not make any whisper about the said domestic enquiry held against her husband though she disclosed that her husband started remaining himself absent from duty for his illness with effect from 1-1-90. There is no whisper to the effect if he started absenting himself from duty after giving due intimation to the management on the ground of his serious illness. As per W.S. submitted by the petitioner/workman her husband fell seriously ill owing

to heart disease in the year 1988 and he remained under treatment at Central Hospital Katras at Dhanbad. Inspite of claiming so the petitioner/workman has failed to produce a single medical paper. It is disclosed that Mangra Munda died on 7-10-92 but she also did not consider necessary to produce his death certificate to show the cause of death of her husband.

In para 9.4.2 of N.C.W.A it is true there is provision for consideration of the employment of the dependent of the deceased if he/she died during the period of his/her service. It is seen that said Mangra Munda being a permanent employee died after rendering atleast 19 years of service to the management. Therefore, the petitioner/workman being the dependent widow of the deceased had right to submit prayer before the management for he employment on compassionate ground relying on the provision of N.C.W.A. as referred to above. Obviously she submitted representation to the management for her employment relying on the said provision of N.C.W.A but management ignored her claim taking the plea that her husband was dismissed from his service with effect from 28-2-92 for committing misconduct on the ground of absentism. Disclosing this fact management submitted that as there was no provision for giving employment to the dependent of a dismissed worker no question arose to consider her prayer for employment. They submitted further that over the said order of dismissal no Industrial Dispute was raised. Within four corners of the Written Statement submitted by the petitioner/workman I have failed to find out any whisper against the claim of the management. Therefore, there is reason to believe that husband of the petitioner was dismissed from his service atleast eight months before his death. It is fact that in the N.C.W.A. there is no provision for employment of the dependent of the deceased who died after the order of his dismissal from his service.

Accordingly onus absolutely was on the petitioner/workman to disprove the claim of the management but I find no hesitation to say that inspite of getting ample opportunity she has misused the same.

In view of the facts and circumstances discussed above I hold that the petitioner has lamentably failed to establish her claim and for which she is not entitled to get any relief.

In the result, the following Award is rendered :—

“B.C.C.L. key Pravandtantra Dwara Karmakar Late Shri Mangra Munda Key Ashrit Ko Niyukti Na Diya Jana Nayaichit Hai. Ukt Ashrit Kissi Rahat Key Patra Nahi Hai.”

B. BISWAS, Presiding Officer

नई दिल्ली, 26 अगस्त, 2004

SCHEDULE

का. आ. 2345.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई. सी. एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय II धनबाद के पंचाट (संदर्भ संख्या 32/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2004 को प्राप्त हुआ था।

[सं० एल-20012/238/2002-आई.आर. (सी-I)]

एस०एस० गुप्ता, अवर सचिव

New Delhi, the 26th August, 2004

S.O. 2345.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 32/2003) of the Central Govt. Indus. Tribunal/Labour Court, II Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workmen, which was received by the Central Government on 24-8-2004.

[No. L-20012/238/2002-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

SHRI B. BISWAS, Presiding Officer

In the matter of an Industrial Dispute under Section
10(1)(d) of the I.D. Act., 1947.

REFERENCE NO. 32 OF 2003

PARTIES : Employers in relation to the management of
Mugnia Area of M/s. ECL and their
workman

APPEARANCES :

On behalf of the workman : None

On behalf of the employers : Mr. B. M. Prasad,
Advocate and Mr.
A.K. Sinha,
Advocate.

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 2nd August, 2004

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/238/2002-IR(C-I), dated, the 10th March, 2003.

“Whether the demand of the Koyala Mazdoor Congress from the Management of M/s. ECL for paying wages to Sri Rameshwar Manjhi from 20-3-92 to 1-2-95 is fair and justified? It so, to what relief is the concerned workman or his legal heirs is/are entitled?”

2. In this reference neither the concerned workman nor his representative appeared before this Tribunal. Management, however, made appearance through their learned Advocate. It reveals from the record that the instant reference case is pending since 2003 for disposal. It further transpires from the record that sufficient opportunities have been given to the workman/union but inspite of giving ample opportunities the workman/union failed to turn and even they did not consider necessary to submit Written Statement on their behalf. Gesture of the workman/union if is taken into consideration will expose clearly that the workman/union is not interested to proceed with the hearing of this case. Under such circumstances it is needless to adjourn the case *suo moto* for days together. Accordingly a ‘No dispute’ Award is rendered and in the instant reference is disposed of on the basis of ‘No dispute’ Award presuming non-existence of any industrial dispute between the parties.

B. BISWAS, Presiding Officer

नई दिल्ली, 26 अगस्त, 2004

का. आ. 2346.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार के.एम.हार्ड कोक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, II धनबाद के पंचाट (संदर्भ संख्या 327/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2004 को प्राप्त हुआ था।

[सं० एल-20012/233/99-आई.आर. (सी-I)]

एस०एस० गुप्ता, अवर सचिव

New Delhi, the 26th August, 2004

S.O. 2346.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 327/99) of the Central Govt. Indus. Tribunal/Labour Court, II Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of K.M. Hard Coke and their workmen, which was received by the Central Government on 24-8-2004.

[No. L-20012/233/99-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD****PRESENT** : Shri B. Biswas, Presiding OfficerIn the matter of an Industrial Dispute under Section
10(1)(d) of the I.D. Act., 1947**REFERENCE NO. 327 OF 1999****PARTIES** : Employers in relation to the management of
of K.M. Hard Coke and their workmen**APPEARANCES:**

On behalf of the workman : None

On behalf of the employers : None

State : Jharkhand Industry : Hard Coke

Dated, Dhanbad, the 2nd August, 2004

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/233/99-IR(C-I), dated, the 24th November, 1999

SCHEDULE

Kya K.M. Coke, Bagsuma Key Pravandhtantra Dwara November 1996 Sey Suchi Mey Diye Gaya 14 Karmkaro Ki Sevaya Samapt Kiya jana Uchit Evam Vidhibat Hai? Yadi nahi to Karmkar Kis Rahat Key Patra Hai?"

LIST OF WORKMEN

- | | |
|---------------------------|-----------------------------|
| 1. Phulmati Manjhian | 2. Smt. Chandmuni Majhain |
| 3. Sukarmuni Manjhian | 4. Smt. Moti Manjhian |
| 5. Sonamunk Manjhian | 6. Diwakar Urf Sakho Manjhi |
| 7. Sri Shivilal Manjhi | 8. Suba Singh |
| 9. Sri Rajesh Roy | 10. Sri Nepal |
| 11. Bindeshwar Prasad Roy | 12. Dharendra Prasad Roy |
| 13. Sri Rakho Manjhi | 14. Sambhu Roy |

2. In this reference neither the concerned workman nor their representative appeared before this Tribunal. None also appeared on behalf of the management. It reveals from the record that the instant dispute is pending since 1999 for disposal. It also further transpires that sufficient opportunities have been given to the parties. But inspite of giving ample opportunities they have failed to turnup before this Tribunal. Even they did not consider necessary to file Written Statement on their behalf. Gesture of the

parties if looked into will expose clearly that they are not interested to proceed with the hearing of this case. Therefore, it is needless to adjourn the case *suo motu* for days together. Accordingly a 'No dispute' Award is rendered and the instant industrial dispute is disposed of on the basis of 'No dispute' Award presuming non-existence of any industrial dispute between the parties.

B. BISWAS, Presiding Officer

नई दिल्ली, 26 अगस्त, 2004

का. आ. 2347.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा०को०को० लि० के प्रबंधांतर के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, II धनबाद के पंचात (संदर्भ संख्या 127/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-8-2004 को प्राप्त हुआ था।

[सं० एल-20012/25/98-आई.आर. (सी-I)]

एस०एस० गुप्ता, अवर सचिव

New Delhi, the 26th August, 2004

S.O. 2347.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 127/99) of the Central Govt. Indus. Tribunal/Labour Court, II Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workmen, which was received by the Central Government on 24-8-2004.

[No. L-20012/25/98-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE**BEFORE THE CENTAL GOVERNMENT INDUSTRIAL
TRIBUNAL (NO. 2) AT DHANBAD****PRESENT** : Shri B. Biswas, Presiding OfficerIn the matter of an Industrial Dispute under Section
10(1)(d) of the I.D. Act., 1947**REFERENCE NO. 127 OF 1999****PARTIES** : Employers in relation to the management of
M/s. BCCL and their workman**APPEARANCES:**On behalf of the workman : Mr. B. Mohanty,
Autho, Representative.

On behalf of the employers : Mr. H. Nath, Advocate.

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 2nd August, 2004

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/25/98-IR (C-I), dated, the 29th January, 1999.

SCHEDULE

"Whether the action of the management of Mohuda Area II of M/s. BCCL in dismissing the services of Sh. Bistu Mohali is justified? If not, to what relief is the workman entitled?"

2. In course of hearing of the instant reference the representative of the workman by filing a petition submitted his prayer to pass a 'No dispute' Award as the concerned workman is not interested to proceed with the hearing of this case. No objection raised on the side of the management, in view of the prayer made by the representative of the workman. As the concerned workman is not willing to proceed in the instant case there is no scope of fix date for further hearing the case. The case is accordingly closed. Under the circumstances, a 'No dispute' Award is rendered and the instant reference is disposed of on the basis of 'No dispute' Award presuming non-existence of any industrial dispute between the parties.

B. BISWAS, Presiding Officer

नई दिल्ली, 26 अगस्त, 2004

क्रा. आ. 2348.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी. सी. एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय II धनबाद के पंचाट (संदर्भ संख्या 55/2003.) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2004 को प्राप्त हुआ था।

[सं० एल-20012/268/2002-आई.आर. (सी-1)]

एस०एस० गुप्ता, अवर सचिव

New Delhi, the 26th August, 2004

S.O. 2348.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 55/2003) of the Central Government Industrial Tribunal/Labour Court II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of CCL and their workmen; which was received by the Central Government on 24-8-2004.

[No. L-20012/268/2002-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD**

PRESENT :

SHRI B. BISWAS, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

REFERENCE NO. 55 OF 2003

PARTIES : Employers in relation to the management of Dhori Colliery of M/s. CCL and their workman.

APPEARANCES:

On behalf of the workman : None

On behalf of the employers : Mr. D.K. Verma, Advocate.

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 2nd August, 2004

AWARD

The Govt. Of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/268/2002-IR(C-I), dated, 8-7-2003.

SCHEDULE

"Whether the action of Management of CCL Dhori Colliery not to pay the wages from 9-9-1999 to 16-6-2000 to Pitamber Singh and son Kumar P.R. Ws. of Dhori Colliery is legal and justified? If not, to what relief are the workman entitled?"

2. In this reference management appeared through their authorised Advocate but none appeared on behalf of the workman. The concerned workman also failed to appear before this Tribunal Record shows that inspite of issuance of consecutive notices neither the concerned workman nor the sponsoring union considered necessary to submit written statement in this case. The attitude of the concerned workman/sponsoring union if is taken into consideration will expose clearly that neither the concerned workman nor the sponsoring union is interested to proceed with the hearing of the case. Accordingly, this Tribunal finds no ground to keep pending this case for days together only for appearance and written statement of the concerned workman/union. Hence the case is closed. Under such circumstances; a 'No dispute' Award is rendered and the instant reference is disposed of on the basis of 'No dispute' Award presuming non-existence of any industrial dispute between the parties.

B. BISWAS, Presiding Officer

नई दिल्ली, 26 अगस्त, 2004

का. आ. 2349.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय II, धनबाद के पंचाट (संदर्भ संख्या 54/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2004 को प्राप्त हुआ था।

[सं० एल-20012/16/2003-आई.आर. (सी-1)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 26th August, 2004

S.O. 2349.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 54/2003) of the Central Government Industrial Tribunal-cum-Labour Court II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of C.C.L. and their workmen, which was received by the Central Government on 24-8-2004.

[No. L-20012/16/2003-IR (C-I)]

S.S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

Shri B. BISWAS : Presiding Officer

In the matter of an Industrial Dispute under Section 10
(1) (d) of the I.D. Act, 1947

Reference No. 54 of 2003

PARTIES: Employers in relation to the management of
Argada Colliery of M/s. CCL and their
workman.

APPEARANCES:

On behalf of the workman : None

On behalf of the employers : Mr. D.K. Verma, Advocate.

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 2nd August, 2004

AWARD

The Govt. of India, Ministry of Labour, in exercise of
the powers conferred on them under Section 10 (1)(d) of

the I.D. Act, 1947 has referred the following dispute to this
Tribunal for adjudication vide their Order No. L-20012/16/
2003 dated the 27th June, 2003.

SCHEDULE

“Whether the management of CCL, Argada Colliery
is justified in not permitting Sh. Vijay, Piece rated
(UGL) to resume duty pending enquiry into charge
sheet dated 20-9-2000? If not, to what relief is the
workman entitled?”

2. In this reference management appeared through
their authorised Advocate but none appeared on behalf
of the workman. The concerned workman also failed to
appear before this Tribunal. Record shows that inspite of
issuance of consecutive notices neither the concerned
workman nor the sponsoring union considered necessary
to submit written statement in this case. The attitude of
the concerned workman/sponsoring union if is taken into
consideration will expose clearly that neither the
concerned workman nor the sponsoring union is
interested to proceed with the hearing of the case.
Accordingly, this Tribunal finds no ground to keep
pending this case for days together only for appearance
and written statement of the concerned workman/union.
Hence the case is closed. Under such circumstances, a
‘No dispute’ Award is rendered and the instant reference
is disposed of on the basis of ‘No dispute’ Award
presuming non-existence of any industrial dispute
between the parties.

B. BISWAS, Presiding Officer

नई दिल्ली, 26 अगस्त, 2004

का. आ. 2350.—औद्योगिक विवाद अधिनियम, 1947 (1947
का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा.को.को.लि.
के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच,
अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक
अधिकरण/श्रम न्यायालय II, धनबाद के पंचाट (संदर्भ संख्या 99/99)
को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2004 को प्राप्त
हुआ था।

[सं० एल-20012/21/98-आई.आर. (सी-1)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 26th August, 2004

S.O. 2350.—In pursuance of Section 17 of the
Industrial Dispute Act, 1947 (14 of 1947), the Central
Government hereby publishes the award (Ref. No. 99/99)
of the Central Government Industrial Tribunal/Labour
Court II, Dhanbad now as shown in the Annexure in the

Industrial Dispute between the employers in relation to the management of B.C.C.L. and their workman, which was received by the Central Government on 24-8-2004.

[No. L-20012/21/98-IR (C-I)]

S. S. GUPTA, Under Secy.

objection in view of the submission made by the representative of the workman. Under such circumstances, a 'No dispute' Award is rendered and the instant reference is disposed of on the basis of 'No dispute' Award presuming non-existence of any industrial dispute between the parties.

B. BISWAS, Presiding Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

Shri B. BISWAS : Presiding Officer

In the matter of an Industrial Dispute under Section 10
(1) (d) of the I.D. Act, 1947

Reference No. 99 of 1999

PARTIES: Employers in relation to the management of
BCCL and their workman.

APPEARANCES:

On behalf of the workman : Mr. B.N. Singh, Authorised
Representative.

On behalf of the employers : Mr. D. K. Verma, Advocate.

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 2nd August, 2004

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10 (1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/21/98-IR(C-I), dated the 29th January, 1999.

SCHEDULE

"Whether the action of the management of Govindpur Arca No. III of M/s. BCCL that the termination of the services of Shri Indradeo Ram w.e.f. 26-9-97 is justified? If not, to what relief is the workman entitled?"

2. In this reference both the parties appeared through their authorised representative. However, in course of hearing the representative of the workman submitted that the instant case may be closed and a 'No dispute' Award may be passed in this case as the concerned workman is not interested to proceed with the case. Learned Advocate for the management raised no

नई दिल्ली, 26 अगस्त, 2004

का. आ. 2351.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा.को.को.लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय II, धनबाद के पंचाट (संदर्भ संख्या 158/91) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2004 को प्राप्त हुआ था।

[सं० एल-20012/149/91-आई आर (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 26th August, 2004

S.O. 2351.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 158/91) of the Central Govt. Indus. Tribunal/ Labour Court II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of B.C.C.L. and their workmen, which was received by the Central Government on 24-8-2004.

[No. L-20012/149/91-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

Shri B. BISWAS : Presiding Officer

In the matter of an Industrial Dispute under Section 10
(1) (d) of the I.D. Act, 1947

Reference No. 158 of 1991

PARTIES: Employers in relation to the management of
Bhowra (N) U/G Mines of M/s. BCCL and
their workman.

APPEARANCES:

On behalf of the workman : None

On behalf of the employers : Mr. D. K. Verma, Advocate.

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 6th August, 2004

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10 (1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/149/91-IR(Coal-I), dated the 26th November, 1991.

SCHEDULE

“Whether the action of the management of Bhowra (N) U/G Mines under Bhowra Area No. XI of M/s. BCCL in terminating the services of Shri Parmeshwar, DGLoader vide their letter No. GM/PER/Bhowra-XI/81/539-41 dated 28/29-1-1981 is justified? If not, to what relief is the workman entitled?”

2. The case of the concerned workman according to Written Statement submitted by him in brief is as follow :

In filing the written statement he submitted that vide letter GM/PER/Employment XI/80/7204-29 dt. 24-8-80 issued by the management he got his appointment as miner/loader at Bhowra (N) U.G. Mines under Voluntary Retirement Scheme in place of his mother-in-law Smt. Atia Kamin, Wagon Loader of Jealgora Colliery. He submitted that at the time of his appointment management made an enquiry against him, verified all papers, documents and declarations made in, information furnished in respect of his relationship with Smt. Atia Kamin and Sri Parmeshwar.

He submitted that being satisfied with all credentials management not only issued his letter of appointment but also after joining issued his indent card. He alleged that thereafter the said management by letter No. GM/PER.BHO:XI:81:539-41 dt. 28/29 January, 1981, terminated him from his service. He alleged further that before issuance of that termination letter they neither considered necessary to issue any notice nor issued any chargesheet to him with the allegation of committing any misconduct. Even they did not consider necessary to hold any domestic enquiry against him. They also did not give him any opportunity to make his submission before terminating him from service. Accordingly, he disclosed that said action of the management was not only illegal and arbitrary but also it violated the principle of natural justice. In the circumstances he raised an

Industrial Dispute for conciliation which ultimately resulted reference to this Tribunal for adjudication. He as such submitted his prayer to pass award directing the management to reinstate him with full back wages and other consequential relief.

3. Management on the contrary after filing written statement-cum-rejoinder have denied all the claims and allegations which the concerned workman asserted in his written statement. They submitted that the concerned workman made a false declaration that he was son-in-law of Smt. Atia Kamin, a wagon loader of Bhowra (N) Colliery and secured employment in her place as her dependent. He was appointed on probation by letter dt. 20/24-8-80 and during the period of his service he was terminated by letter dt. 28/29-1-81 as he was found not the son-in-law of Smt. Atia Kamin.

They submitted that Smt. Atia Kamin lodged a complaint to the management to the effect that the concerned workman was not her son-in-law and taking advantage of her long absence on account of sickness, he managed to file applications for his employment claiming himself as her son-in-law with the help of some Union Leaders. On receipt of the said complaint they made an enquiry and after enquiry terminated him from his service as the allegation made by Smt. Atia Kamin was found to be correct. They submitted that question of giving notice to the concerned workman under Section 25F of the I.D. Act did not arise as he did not work even for one year continuously. Moreover, his employment was void as by way of false personification he got his service. They further submitted that in the appointment letter issued to him there was clear condition that his service would be terminated during the period of his probation without any notice and also without any compensation. Moreover there was also specific stipulation that his service will be terminated in the even of discovery of his false declaration on any matter connected with the particulars furnished by him or as regards to his relationship with Smt. Atia Kamin. Accordingly, they submitted that they did not commit any illegality or took any arbitrary decision against him violating the principle of natural justice.

In view of the facts and circumstances stated above they submitted prayer to pass award rejecting the claim of the concerned workman.

4. POINTS TO BE DECIDED

“Whether the action of the management of Bhowra (N) U/G Mines under Bowra Area No. XI of M/s. BCCL in terminating the services of Shri Parmeshwar, DC Loader vide their letter No. GM/PER/BHOWRA-XI/81/589-41 dated 28/29-1-1981 is justified? If not, to what relief the workman is entitled?”

5. FINDING WITH REASONS

It appears from the record that the instant case was taken up for *ex parte* hearing as the concerned workman inspite of getting ample opportunity failed to take any step with a view to substantiate his claim. This is not the solitary occasion but also for non-taking of steps by him previously a 'No dispute' Award was passed on 7-6-2001. Thereafter the concerned workman appeared and filed a Misc. Case for restoration of the reference case to its original file and number and vide order No. 4 dt. 13-11-2001 his prayer was considered and allowed and the instant reference case was restored to its original file and number. Thereafter again the concerned workman started remaining himself absent without assigning any reason. Inspite of giving sufficient opportunity when the concerned workman or his representative failed to take any step the instant case was taken up for *ex parte* hearing.

In course of *ex parte* hearing management examined one witness as MW-1. Considering the facts disclosed in the pleadings of both sides and also considering evidence of MW-1 I find no dispute to hold that one Atia Kamin was a Wagon loader under the management. It is seen that during 1980 management issued Voluntary Retirement Scheme for the female workers employed under them with the option to provide employment to any of her male dependant. It is admitted that in response to that scheme said Smt. Atia Kamin submitted her resignation from service promoting employment of her son-in-law i.e. the concerned workman and submitted necessary papers to that effect. Thereafter management accepting resignation of Smt. Atia Kamin issued letter of appointment in favour of the concerned workman who was her dependent son-in-law. The said appointment letter during evidence of MW-1 was marked as Ext. M-1. It is seen from the appointment letter that the concerned workman got his appointment as Miner/Loader and was placed on probation for a period of one year.

It is the contention of the management that during this period said Smt. Atia Kamin by submitting an application disclosed that the concerned workman was not her son-in-law. After receiving the said application management made an enquiry and found that the concerned workman was not her son-in-law and accordingly as per terms and condition laid down in the letter of appointment management terminated him from his service (Ext. M-2).

It is the contention of the concerned workman according to his written statement that no opportunity was given to him to depend his case before he was terminated from his service. Even the management did not give any notice to him to that effect. On the contrary

MW-1 relying on the appointment letter issued to him submitted that in the appointment letter there was a clear stipulation that management reserved the right to terminate the concerned workman from his service if any gross fault is detected in future. From the evidence of MW-1 it further transpires that in course of enquiry the concerned workman failed to produce any cogent evidence to show that he was actually son-in-law of Son Atia Kamin. The allegation of the management is that the concerned workman falsely represented himself as son-in-law of Smt. Atia Kamin and by giving false declaration he got his appointment. Considering all the facts and circumstances it transpires that not only the concerned workman but also initially Smt. Atia Kamin also made a false statement promoting employment of the concerned workman as her son-in-law. Therefore, it is clear that both Atia Kamin as well as the concerned workman made false declaration and created false document for the interest of employment. The only contention of the concerned workman is that management did not give him any opportunity to defend his case. If for argument's sake it is considered that management did not give him any opportunity to defend his case, in that case he had ample scope to justify his claim in course of hearing of this case. It is really astonishing to note that inspite of getting sufficient opportunities the concerned workman did not consider necessary to adduce evidence with a view to substantiate his claim. As per condition imposed in the letter of appointment management removed the concerned workman from his service when it was detected that by exercising fraud he procured employment under the management identifying himself as son-in-law of Smt. Atia Kamin. Therefore, onus on him to establish that he is actually the son-in-law of that lady. he had the scope to examine the daughter of Smt. Atia Kamin whom he married to justify his claim but he did not consider necessary to do so.

After careful consideration of all the facts and circumstances I hold that the concerned workman inspite of getting sufficient opportunities have failed to establish his claim and for which I find no reason to hold that management illegally terminated him from his service and for which he is not entitled to get any relief.

In the result, the following Award is rendered :-

"The action of the management of Bhowra (N) U/G Mines under Bhowra Area No. XI of M/s. BCCL in terminating the services of Shri Paramshwar DC Loader vide their letter No. GM/PER/Bhowra-XI/81/589-41 dated 28/29-1-1981 is justified. Consequently, the concerned workman is not entitled to get any relief.

B.BISWAS, Presiding Officer

नई दिल्ली, 26 अगस्त, 2004

AWARD

का. आ. 2352.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा.को.को.लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय II, धनबाद के पंचाट (संदर्भ संख्या 75/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2004 को प्राप्त हुआ था।

[सं० एल-20012/107/92-आई.आर. (सी-1)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 26th August, 2004

S.O. 2352.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 75/93) of the Central Govt. Indus. Tribunal-cum-Labour Court, II Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of B.C.C.L. and their workmen, which was received by the Central Government on 24-8-2004.

[No. L-20012/107/92-IR (C-I)]

S.S. GUPTA, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 2, DHANBAD**

In the matter of a reference U/S. 10(1) (d)(2A) of the Industrial Disputes Act, 1947

Reference No. 75 of 1993

PARTIES: Employers in relation to the management of Khas Kusunda Colliery of M/s. B.C.C. Ltd.

AND**Their Workmen****PRESENT:** Shri B. Biswas : Presiding Officer**APPEARANCES:**

the employers : Shri B.M. Prasad, Advocate
the workman : Shri B.N. Singh, Secretary,
National Coal Workers Congress.

State : Jharkhand

Industry : Coal

Dated, the 3rd August, 2004

By Order No. L-20012(107)/92-I.R. (Coal-I) dated 24-5-1993 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of Khas Kusunda Colliery of BCCL in not paying wages from 1983 to Smt. Fekni Kamin is justified? If not, to what relief is the workman entitled?”

2. The case of the concerned workman according to the written statement submitted by the sponsoring union on her behalf, in brief, is as follows :

It has been submitted by the sponsoring union that the concerned workman was a permanent workmen of Khas Kusunda Colliery. On 24-10-73 due to fall of a big piece of coal on the hand of the concerned workman, she sustained serious injury and it was duly communicated to the management by a petition dated 25-10-73. They submitted that in course of her treatment for the injury sustained by the concerned workman she became insane and for which she was admitted to Ranchi Mansik Arogyashala, Kanke. There she remained under treatment for a long period and thereafter she was released with her fit certificate issued by the Medical Officer of the said hospital dated 1-8-83. Accordingly she came with the said medical certificate with a view to resume her duty, but the management refused to allow her to resume her duty and for which the sponsoring union raised an industrial dispute before the A.L.C. (C) on her behalf. The sponsoring union admitted that in course of hearing of the conciliation proceeding on 13-8-88 they arrived into a settlement to send the dispute to the Joint Committee consisting of the representatives of the union and the Management. They alleged that the said Joint Committee did not consider necessary to dispose of the dispute in question as per settlement within the stipulated period. On the contrary, they submitted a report on 4-7-90. They alleged that the decision of the Joint Committee was neither known to the concerned workman not to the union. They alleged further that the said delay was deliberate and taking opportunity of the same the management consumed time in allowing the concerned workmen to resume duty and for which she raised further industrial dispute in this matter vide her representation dated 13-5-91. During hearing of the conciliation proceeding the management did not appear and for which the conciliation proceeding ended in failure. thereafter on 2-8-91 the management on its own allowed the concerned workman to resume her duty. But did not pay her back wages from 1983 as per their demand. They submitted that the concerned workman is legally entitled to receive the wages

since 1983. They further alleged that the management deliberately stayed resumption of duty of the concerned workman till 1-8-91 on some pretext or the other illegally, arbitrarily and violating the principle of natural justice. Accordingly, the sponsoring union submitted prayer to pass award directing the management to pay wages to the concerned workman w.e.f. 1983.

3. The management, on the contrary, after filing written statement-cum-rejoinder have denied all the claims and allegations which the sponsoring union asserted in the written statement submitted on behalf of the concerned workman. They submitted that taking the ground of injury sustained by the concerned workman she remained absent from duty continuously for years together and thereafter when she intended to join her duty on the basis of medical certificate issued by a Medical Officer on 1-8-83 the management refused to allow her to join her duty as she abandoned her service long back as a result of which the sponsoring union, R.C.M.S. raised an industrial dispute before the A.L.C. (C), Dhanbad and thereafter in course of hearing of the conciliation proceeding both the concerned workman and the management agreed to refer the matter of the concerned workman to the Joint Committee consisting of Shri Zafri, Ex-G.M. (Admn.) and Shri G.D. Pandey, Vice President, RCMS. The said Joint Committee agreed to and recommended the concerned person for employment after medical examination with the observation that the period of idleness shall be treated as Dias Non and accordingly she was allowed to join her employment on and from 2-8-91. They submitted that the claim of the sponsoring union for releasing wages w.e.f. 1983 finds no basis at all and for which she is not entitled to get any relief in view of her prayer. They submitted further that they acted in view of the report submitted by the Joint Committee which is binding upon both sides. Accordingly, they submitted prayer to pass award rejecting the claim of the concerned workman.

Points to be decided :

4. "Whether the action of the management of Khas Kusunda Colliery of BCCL in not paying wages from 1983 to Smt. Fekni Kamin is justified? If not, to what relief is the workman is entitled to?"

Finding with reasons :

5. It transpires from the record that the sponsoring union with a view to establish their claim examined the concerned workman as WW-1. The management also with a view to substantiate their claim examined one witness as MW-1.

Considering the facts disclosed in the written statement submitted by the sponsoring union and also evidence of the concerned workman it transpires that the concerned workman sustained injury in her little

finger of the left hand of the body due to fall of a chunk of coal on 24-10-73. It is the contention of the sponsoring union that the matter of the said incident was duly intimated to the management and thereafter the concerned workman remained under treatment of the colliery hospital for her injury. It is the contention of the sponsoring union that in the midst of said treatment the concerned workman became insane and for which she was admitted to Ranchi Mansik Arogyashala, Kanke for her treatment. They disclosed that she was released from the hospital with medical certificate of fitness dated 1-8-83 and thereafter she came to her place of duty/work with a view to resume her duty. But the management refused to allow to resume her duty taking the plea that her name had already been struck down from the roll of workers as she abandoned her service. As a result, the R.C.M.S. Union took up the matter with the management, but no fruitful result yielded and for which they raised industrial dispute before the A.L.C. (C), Dhanbad. Considering the evidence of the management I find corroboration of the fact relating to raising of industrial dispute by the sponsoring union over the issue in question. It is admitted fact that during pendency of hearing of the conciliation proceeding both the parties agreed to refer the matter to Joint Committee for settlement of the dispute in question. The Joint Committee was formed consisting of two members, Sri Zafri, Ex-G.M. (Admn.) and Shri G.D. Pandey, Vice President, RCMS. In course of hearing the settlement entered into between the parties dated 11-9-88 was marked as Ext. M-4. The said settlement petition was duly signed by the representatives of the management as well as of the sponsoring union and also by A.L.C. (C), Dhanbad. As per the said settlement the Joint Committee was asked to submit their report within one month separately or jointly, failing which it will be presumed that the terms of this settlement have been fully implemented. The term of settlement is as follows :

"Both the parties have agreed to send the issue to Joint Committee Sri G.D. Pandey, Vice President, RCMS and Sri A.P. Sinha, General Manager (P), Koyla Bhawan, M/s. B.C.C. Ltd. for a decision."

It is seen that the term of settlement appears to be incomplete and therefore there is no scope to draw any conclusion which term of the settlement will be fully implemented if the Joint Committee fails to submit report within one month. It is curious to note that A.L.C. (C), Dhanbad though signed the settlement did not go through the terms of settlement properly. Had that been so the anomaly which remained there in the terms of settlement could have averted. From the record I do not find any whisper if the A.L.C. (C), issued any reminder to the Joint Committee for submission of their report.

No order also is forthcoming on the part of the A.L.C. (C) to show which step was taken by him when within the stipulated period the Joint Committee failed to submit their report. It is seen that the Joint Committee submitted their report on 4-7-90, which was duly accepted not only by the A.L.C. (C) but also by the management. The report of the Joint Committee marked as Ext. W-2 is as follows :

“As in all other cases of absentism the court has given number of judgements in favour of the worker with full back wages, we recommend that the workman should be allowed to resume duty and the period of idleness should be treated as dies non.”

The settlement was duly accepted by the union as well as by the management. No evidence is forthcoming that as per provision of law any letter was issued to the A.L.C. (C) on the part of the sponsoring union for non acceptance of the terms of settlement on their part. Therefore, the settlement is very much binding upon both sides. The concerned workman in her evidence disclosed that at that relevant time she was member of R.C.M.S. The Industrial dispute was raised by R.C.M.S. on behalf of the concerned workman.

6. It is the contention of the management that as per Joint Committee decision the concerned workman was allowed to resume her duty w.e.f. 2-8-91 after being satisfied that she was the workman under the management and she was medically fit. Thereafter the concerned workman started working under the management and started drawing wages from the date of her joining there. The present industrial dispute was raised by the sponsoring union, National Coal Workers Congress in the year 1992 after the concerned workman resumed her duty. By raising the said dispute the present sponsoring union submitted that the management illegally and arbitrarily refused to pay wages of the concerned workman from 1983. The Content of this reference sent by the Ministry appears to be vague. In the reference there was no whisper actually from which date, month of 1983 Smt. Fekni Kamin i.e. the concerned workman has claimed for her wages. It is seen as per written statement that the concerned workman was released from the hospital with fit certificate from 1-8-83. But there is no whisper in the written statement actually on which date she went to her place of duty with a view to resume her duty. From her written statement it transpires that her previous union, R.C.M.S. submitted representation to the management on 18-4-87. Therefore, no satisfactory explanation is forthcoming from the facts disclosed in the written statement what she did during such long period between 1-8-83 and 8-4-87.

7. I have already discussed above that during the pendency of hearing of the conciliation proceeding both the parties entered into a joint settlement to refer the dispute before the Joint Committee for its decision. The said settlement not only was signed by the parties but also was signed by the A.L.C. (C). Therefore, the settlement was very much binding upon the parties as no incriminating material is forthcoming that the concerned workman refused to accept the settlement in question. The Joint Committee submitted report after a lapse of more than one year and that fault is to be considered as the fault of the said Joint Committee and not of the management. No proper step was also taken by the A.L.C. (C) to create pressure upon the Joint Committee to submit their report. It is seen that on the basis of the report of the Joint Committee the management provided employment to the concerned workman w.e.f. 2-1-91. The report of the Joint Committee was not challenged by the concerned workman nor it was refuted by the A.L.C. (C). Therefore, the report of the Joint Committee is also binding upon the parties. It is seen that the concerned workman resumed her duty accepting the report of the Joint Committee and at that relevant time she also did not raise any objection. Therefore, the concerned workman has been estopped from challenging the validity of the report submitted by the Joint Committee after its acceptance. As the settlement as well as the report of the Joint Committee are very much binding upon the parties the present sponsoring union who is contesting the case on behalf of the workman cannot exonerate their responsibility to assign reason in support of their claim, as per reference. I find no hesitation to say that excepting raising the dispute the present union has failed to satisfy this Tribunal that the settlement and the report of the Joint Committee were illegal and for which the same is not binding upon the concerned workman. Just raising a mere claim does not invite any relief until and unless the same is substantiated properly.

8. In view of my discussion above, I hold that the present union has lamentably failed to establish their claim. On the contrary, I should say as the settlement and the report of the Joint Committee are binding upon the parties they are estopped from raising any dispute and for which they are not entitled to get any relief.

9. In the result, the following award is rendered —

The action of the management of Khas Kusunda Colliery of M/s. Bharat Coking Coal Ltd. in not paying wages from 1983 to Smt. Fekni Kamin is justified and hence the concerned workman is not entitled to get any relief.

B. BISWAS, Presiding Officer.

नई दिल्ली, 26 अगस्त, 2004

SCHEDULE

का. आ. 2353.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा.को.को.लि. के प्रबंधन के संवर्द्धन नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय II, धनबाद के पंचाट (संदर्भ संख्या 128/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2004 को प्राप्त हुआ था।

[सं० एल-20012/23/98-आईआर (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 26th August, 2004

S.O. 2353.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 128/99) of the Central Government Industrial Tribunal/Labour Court, II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 24-8-2004.

[No. L-20012/23/98-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD****PRESENT:**

Shri B. Biswas, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act, 1947

REFERENCE NO. 128 OF 1999**PARTIES:**

Employers in relation to the management of M/s. BCCL and their workman.

APPEARANCES:

On behalf of the Workman : None

On behalf of the Employers : Mr. H. Nath, Advocate.

State : Jharkhand : Industry : Coal

Dhanbad, the 4th August, 2004

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 17(1)(b) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/23/98-IR (C-I), dated, the 29th January, 1999.

"Whether the action of management of Mohuda Area II of M/s. BCCL, in dismissing Shri Nepal Rajwar from service is justified? If not, to what relief is the workman is entitled?"

2. The case of the concerned workman according to Written Statement, submitted by the sponsoring Union on his behalf in brief is as follows :—

The sponsoring Union submitted that the concerned workman due to his mental illness could not attend the place of duty, in spite the management knowing fully well of this fact issued chargesheet to him and thereafter on the basis of the report submitted by the Enquiry Officer who hold domestic enquiry against him dismissed him from service illegally, arbitrarily and violating the principle of natural justice. Accordingly they raised an Industrial Dispute before the ALC(C), Dhandbad for conciliation which ultimately resulted reference to this Tribunal for adjudication. In the circumstances, they submitted prayer to pass award directing the management to reinstate the concerned workman in service from the date of dismissal with full back wages and other consequential benefits.

3. Management on the contrary after filing Written Statement-cum-rejoinder have denied all the claims and allegations which the sponsoring Union asserted in the Written Statement against them on behalf of the concerned workman.

They submitted that the concerned workman who was a miner/loader at Lohapatti colliery started remaining himself absent from duty without giving any intimation or taking prior permission of the management from 21-12-94 and in this way he remained himself absent from duty unauthorisedly till 13-3-95 and for which a chargesheet bearing No. 95/724 dt. 13-3-95 was issued against him. On receipt of the said chargesheet the concerned workman submitted his reply denying the charges brought against him. They submitted that as the reply given by the concerned workman was not satisfactory the disciplinary authority decided to hold domestic enquiry against him and appointed Mr. B.H.S. Tiwari Personnel Manager as Enquiry Officer and Mr. A. Paswan Sr. Asstt. Colliery Manager as Presenting Officer. They submitted that the concerned workman fully participated in the hearing of the Enquiry proceeding and full opportunity was given to him to defend his case. After completion of the hearing of domestic enquiry said Enquiry Officer submitted his report to the Disciplinary Authority holding the concerned workman guilty to the charges. Thereafter the Disciplinary authority issued a show cause notice to the concerned workman to which he did not give any reply. Thereafter he was dismissed from his service *vide* dismissal order No. LC/Dismissal/96/3735 dt. 12-12-96 with effect from the

same date. They submitted that the Disciplinary authority neither committed any illegality nor took any arbitrary decision violating the principle of natural justice in dismissing him from his service. Accordingly, they submitted prayer to pass award rejecting the claim of the sponsoring Union for reinstatement of the concerned workman.

4. POINTS TO BE DECIDED

“Whether the action of the management of Mohuda Area of M/s. BCCL in dismissing Shri Nepal Rajwar from service is justified? If not, to what relief is the workman entitled?”

5. FINDING WITH REASONS

It transpires from the record that before taking up hearing of this case on merit it was taken into consideration as preliminary issue to consider whether domestic enquiry held against the concerned workman was fair, proper and in accordance with the principle of natural justice. The said issue was disposed of *vide* Order No. 17 dt. 11-5-2004 in favour of the management.

Accordingly, on merit here the point for consideration is whether the management have been able to substantiate the charge brought against the concerned workman for committing misconduct on the ground of absentism as per clause 26:1:1 of the Certified Standing Order and if so, whether the concerned workman is entitled to get any relief U/s 11-A of the Industrial Disputes Act., 1947.

In the instant case it transpires that neither the management nor the concerned workman adduced any oral evidence in support of their respective claim. Considering the facts disclosed in the pleadings of both sides and also considering material documents on record I find no dispute to hold that the concerned workman was a miner/loader at Lohapatti colliery under the management.

It is the specific allegation of the management that as the concerned workman remained himself unauthorised absent from duty from 21-12-94 to 13-3-95 a chargesheet was issued to him on the allegation of committing misconduct for his unauthorised absence as per clause 26:1:1 of the Certified Standing Order. The copy of the charge sheet during hearing was marked as Ext. M-1/13. It is admitted fact that the concerned workman received the chargesheet issued against him by the management. It is seen that the concerned workman on receipt of the said chargesheet submitted his reply stating the ground that owing to his illness he did not get scope to perform his duties. The reply given by him during hearing was marked as Ext. M-1/11.

According to the management as reply given by the concerned workman was not satisfactory the Disciplinary Authority decided to hold domestic enquiry against him and appointed B.H.S. Tiwari as Enquiry Officer. It is admitted

fact that the concerned workman participated the enquiry proceeding: There is no allegation on the part of the concerned workman that the Enquiry Officer made a perfunctory enquiry against him at the choice of the management. No incriminating material is forthcoming that the Enquiry Officer was biased in conducting the enquiry proceeding against him. During hearing the enquiry proceeding papers were marked as Ext. M-1/3 to M-1/6. It transpires that during hearing the concerned workman not only submitted Medical Certificate but also submitted series of prescriptions relating to his treatment issued by Dr. Ram Naresh Prosad in support of his ailment which were duly marked as Ext. M-1/7 to M-1/10.

It is seen that the Enquiry Officer after completing domestic enquiry submitted his report which was marked as Ext. M-1/2.

The Enquiry Officer in his report disclosed that the concerned workman for his remaining unauthorised absence from duty with effect from 31-12-94 to 13-3-95 could not give any satisfactory explanation though through his co-worker full opportunity was given to him. From the report of the Enquiry Officer it transpires that management produced relevant papers to show that the concerned workman started remaining himself absent from duty with effect from 25-12-94. It is the contention of the concerned workman that as he was suffering from mental illness associated with other problem he could not get scope to attend his duty. He further disclosed that he gave due intimation to the management by Regd. post. In support of his claim he relied on postal receipt. The postal receipt shows that an article was posted addressed to the management in the year 1996. Medical certificate marked as Ext. M-1/7 shows that the concerned workman was under treatment of Dr. Ram Naresh Prosad w.e.f. 7-4-95 to 30-8-95. Prescriptions relating to his treatment marked as Ext. M-1/8 to M-1/10 shows that he was under treatment from 7-4-95 to 2-7-96. After careful consideration of all these medical papers I find sufficient ground to hold that during this period the concerned workman was lying ill. The allegation of the management is that the concerned workman has failed to produce any cogent paper to show the reason of his absence from 31-12-94 to 13-3-95. It is fact that the concerned workman has failed to produce any cogent paper to establish the ground of his absence during the said period. However, if it is looked into carefully it will expose that there was a linkage during the period of his absence from 31-12-94 to 13-3-95 followed by his subsequent absence from 7-4-95 and onward. It is the claim of the concerned workman that as he became a mental patient he could not attend to his duty. The medical certificate and prescriptions produced by the concerned workman supports his claim. It is to be borne into mind that mental Psychoses does not occur suddenly but it gradually develops and thereafter it exposes. If this aspect is taken into consideration there is scope to arrive into conclusion

that the first phase of his unauthorised absence had a linkage with his subsequent absence. It is fact that the concerned workman was on unauthorised leave but simultaneously it is also to be looked into whether for a workman who was developing mental ailment had any scope to intimate the ground of his absence to the management. If the provision of Certified Standing Order is taken into consideration there is scope to draw conclusion that finding of the Enquiry Officer to hold the concerned workman guilty to the charges had its merit and in that case there is scope to say that management have been able to substantiate the charge for committing misconduct as per provision laid down in para 26:1:1 of the Certified Standing Order.

It is seen that the Disciplinary authority after considering the report of the Enquiry Officer dismissed the concerned workman from his service. Therefore, it is to be looked into if the order of dismissal was proportionate in relation to the misconduct committed by the concerned workman and if not whether the concerned workman is entitled to yet any relief as per provision laid down U/s. 11A of the I.D. Act, 1947.

Section 11 A speaks as follows :—

"Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award set aside the order of the discharged or dismissed and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require."

Therefore, according to this provision it is to be looked into whether the order of dismissal passed the Disciplinary authority was justified or not. I have carefully considered all material papers but failed to find out any allegation that the concerned workman was a habitual absentee and was very casual in attending his duties. The order of dismissal was issued for his remaining absence from duty with effect from 31-12-94 to 13-3-95 i.e. for a period of three months 13 days. The concerned workman though failed to submit any paper to substantiate the ground of his absence for the period in question submitted sufficient medical papers relating to his mental ailment for subsequent period. I have already discussed above that exposition of such ailment does not come all on a sudden. Actually before its exposition it remains in dormant stage and during this period various symptoms are found and he becomes indifferent in the practical field.

Apart from this fact it is seen that the punishment which has been imposed for causing absence for 3 months and 13 days appears to be absolutely disproportionate in relation to the offence committed by him and for which there is sufficient scope to say that it was unjustified.

Accordingly, after careful consideration of all the facts and circumstances I hold that instead of dismissal of the concerned workman from his service if his two annual increments are stopped in that case it may meet the ends of justice.

In the result, the following Award is rendered :—

"The action of the management of Mohuda Area II of M/s. BCCL in dismissing Shri Nepal Rajwar from service is not justified. Consequently, he is entitled for reinstatement to his original job with effect from the date of his dismissal without any back wages and other consequential benefits. However, he will get the benefit of drawing wages and other relief from the date of passing this Award with continuity of service. His two annual increments will be stopped by the management permanently."

B. BISWAS, Presiding Officer

नई दिल्ली, 26 अगस्त, 2004

का. आ. 2354.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा.को.को.लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ग्राम न्यायालय II, धनबाद के पंचाट (संदर्भ संख्या 144/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2004 को प्राप्त हुआ था।

[सं० एल-20012/274/2000-आईआर (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 26th August, 2004

S.O. 2354.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 144/2000) of the Central Government Industrial Tribunal/Labour Court, II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 24-8-2004.

[No. L-20012/274/2000-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

SHRI B. BISWAS, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act, 1947

REFERENCE NO. 144 OF 2000**PARTIES :**

Employers in relation to the management of
M/s. BCCL and their workman.

APPEARANCES :

On behalf of the Workman : Mr. N. G. ARUN, authorised
representative Advocate.

On behalf of the Employers : None

State : Jharkhand : Industry : Coal

Dated, Dhanbad, the 4th August, 2004

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/274/2000-IR (C-I), dated, the 25th October, 2000.

SCHEDULE

“KYA RASHTRIYA COLLIERY MAZDOOR SANGH KA KATHAN HAI KI SHRI A.B. DAS, KARMAKAR BHARAT COKING COAL LIMITED KUSUNDA KSHETRA KA TECHNICAL SUPERVISOR GRADE ‘A’ MEY PADANNOTI PAR NIRDHARIT MUL VETAN UNKE KANISHTHA EVAM BAD MAY PADANNOTI KARMAKARO SEY KAM HAI, SAHI HAI ? YADI HAI TO KYA YAHA BESANGATI NYAYOCHIT HAY ? IS SAMVANDH MEY KYA NIRDESH AVASHYAK HAI?”

2. The case of the concerned workman according to Written Statement, submitted by the sponsoring union on his behalf in brief is as follows :—

They sponsoring Union submitted that the concerned workman got his appointment at Busseriya Colliery under Area No. VI on 1-11-66 as Overman and since then he has been regularly and continuously working the job in the said colliery. They submitted that the concerned workman got his promotion as Senior Overman in the year 1977 and was placed in Technical and Supervisory Grade-A. They disclosed that Kashinath Pandey of Godhur Colliery under the same Area of Kusunda and S.S. Singh of Khas Kusunda Colliery under the same Kusunda Area got their promotion as Senior Overman in Technical and Supervisory Grade-A in the year 1983 and accordingly they were juniors to him. Disclosing this fact they submitted that while basic pay of the concerned workman is Rs. 4010.00 P.M. the basic pay of his juniors named are Rs. 4980/- P.M. and Rs. 4520/- P.M. respectively. It is the contention of the sponsoring Union that seniors in the same discipline as per seniority list should

not get less pay in comparison to their juniors and contrary to JBCCI Implementation Instruction No. 42 dt. 19-3-85. They submitted that it was agreed in N.C.W.A. III that the management on their part will not resort to unilateral interpretation of this agreed point and the instruction of JBCCI will be binding on the management. It has been alleged by the sponsoring Union that in spite of clear instruction in JBCCI Circular No. 42 the concerned workman has been deprived of proper fixation of his pay due to arbitrary decision taken by the management. They submitted that basic pay of the concerned workman should be atleast equal to that of his juniors. They submitted that they raised industrial dispute for conciliation as the management did not take any appropriate steps in this regard.

3. It transpires from the record that management though appeared in the instant reference case through their Advocate did not consider necessary to submit any Written Statement-cum-rejoinder in spite of getting sufficient opportunities and for which the case was taken up for ex-parte hearing.

4. POINTS TO BE DECIDED

“KYA RASHTRIYA COLLIERY MAZDOOR SANGH KA KATHAN HAI KI SHRI A.B. DAS KARMAKAR BHARAT COKING COAL LIMITED KUSUNDA KSHETRA KA TECHNICAL SUPERVISOR GRADE ‘A’ MEY PADANNOTI PAR NIRDHARIT MUL VETAN UNKE KANISHTHA EVAM BAD MAY PADANNOTI KARMAKARO SEY KAM HAI, SAHI HAI ? YADI HAI TO KYA YAHA BESANGATI NYAYOCHIT HAY ? IS SAMVANDH MEY KYA NIRDESH AVASHYAK HAI?”

5. Concerned workman during his evidence disclosed that he got his promotion as Senior Overman in the year 1977 and in support of his claim he relied on the order marked as Ext. W-1. On consideration of this document it transpires that management asked the concerned workman to appear before Departmental Promotion Committee for his interview on 28-7-77 at 3 P.M. for consideration of his promotion to the post of Senior Overman. Therefore, letter for interview cannot in any circumstance be considered as letter of promotion to the post of Senior Overman for the concerned workman. Concerned workman rather during his evidence disclosed that some workmen viz. S.S. Singh, Y.K. Yagnik, S.K. Pandey, K.N. Pandey were juniors to him and they got their promotion as Senior Overman in the year 1983. In support of this claim he relied on the promotional list Ext. W-2 published by the management. I have carefully considered the promotional list Ext. W-2 which shows that management by order dt. 25/28-1-83 published the provisional senior seniority list of Overman

working in different collieries/Area on companywise basis. Therefore, this seniority list speaks about seniority of the Overman and not of the posts of Senior Overman. From this list there is no scope to draw any conclusion that the workman named above have got their promotion as Senior Overman in the year 1983.

This witness during his evidence disclosed that in the year 1977 he was placed in the pay scale of Rs. 592-992/- P.M. and in the year 1983 his basic pay was 974/- P.M. He further disclosed that in the year 1986 and on 1-7-91 his basic pay was Rs. 1426/- P.M. and 3540/- P.M. respectively. In course of hearing the concerned workman has failed to produce a single scrap of paper to substantiate his pay which he got during the years as mentioned above.

He during his evidence disclosed that basic pay of Y.K. Yagnik on 1-7-83 was fixed at Rs. 4380/- P.M. and of K.N. Pandey and Shyam Sunder were fixed at Rs. 4380/- P.M. Rs. 4520/- P.M. respectively his basic pay was fixed at Rs. 4240/- P.M.

It is the contention of the sponsoring Union that as per J.B.C.C.I Implementation Instruction No. 42 dt. 19-3-85 if the pay of the Senior Workman in the same cadre is fixed at lower stage in comparison to his juniors after 1-1-83 the pay of the seniors will be stepped upto the level of the juniors employees. This witness during his evidence however admitted that after implementation of N.C.W.A. VI his basic pay was enhanced to Rs. 7262/- P.M. as on 1-7-96. The concerned workman neither in his Written Statement nor during his evidence disclosed actually from which period that discrimination of his basic pay in relation to his juniors has come into existence. As per reference it has been transpired that sponsoring Union has raised the Industrial Dispute in the year 2000. It is seen that the concerned workman got his promotion in the post of Senior Overman in Technical and Supervisory Gr. A in the year 1977 when his juniors named above got their promotion in the same category in the year 1983. He disclosed that getting promotion his juniors started drawing basic pay more than the basic pay drawn by him. But inspite of claiming so he did not consider necessary to produce his wage slip and the wage slips of his juniors. Accordingly, excepting oral submission of the concerned workman there is no scope to consider the veracity of his claim. It transpires from the representation Ext. W-4 dt. 22-1-96 submitted by the concerned workman that there was difference of basic pay of their grade at different collieries under the same area and referring this fact he requested the management to get the same verified and for necessary correction. In support of this claim also the concerned workman did not consider necessary to submit any wage slip with a view to arrive into conclusion that there was actually discrepancy in the basic pay of the Senior Overman released by the management and as a result of which he suffered financial loss though he was senior to other Senior Overman.

Concerned workman during his evidence however, admitted that as per N.C.W.A. VI his basic pay was fixed at Rs. 7262/- P.M. as on 1-7-96 but has failed to disclose what basic pay has been fixed to his juniors as per N.C.W.A. VI by the management. He only disclosed that as per N.C.W.A. VI as his basic pay was fixed less than the basic pay of his juniors as on 1-7-96 he submitted representation to the management with a prayer for claiming his pay protection. It is seen that excepting joint representation dt. 22-1-96 the concerned workman did not submit any copy of representation in support of his claim. I have already discussed about his representation dt. 22-1-96. This representation was submitted prior to his pay fixation as per N.C.W.A. VI. As such in absence of any such document there is no scope at all to arrive into any conclusion relating to his claim. I find no hesitation to say that the claim of the concerned workman appears to be vague as it is not supported by any cogent document.

There is no dispute to hold that a senior workman holds legitimate claim for his pay protection if it is found that his juniors are getting wages higher than the wages drawn by him. In the instant case management neither appeared nor submitted their Written statement-cum-rejoinder and for which there is no scope to verify the contention of the concerned workman. Accordingly, in such situation onus absolutely shifted on the concerned workman to justify his claim by adducing cogent documentary evidence. It is clear from the case record that excepting oral submission neither the concerned workman nor the sponsoring Union considered necessary to substantiate the claim in question by adducing cogent documentary evidence and for which just relying on his claim I find little scope to give any relief to him. Accordingly, the concerned workman is not entitled to get any relief.

In the result, the following Award is rendered :—

"RASHTRIYA COLLIERY MAZDOOR SANGH KA KATHAN KI SHRI A.B. DAS KARMAKAR BHARAT COKING COAL LIMITED KASUNDA KSHETRA KA TECHNICAL SUPERVISOR GRADE 'A' MEY PADANNOTI PAR NIRDHARIT MUL VETAN UNKE KANISHTHA EVAM BAD MEY PADANNOT KARMAKARO SEY KAM HAI SAHI, NAHI HAI YADI HAI ATTA KARMAKAR KISI BHI RAHAT KA PATRA NAHI HAI ?"

B. BISWAS, Presiding Officer

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 8 सितम्बर, 2004

का. आ. 2355.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप धारा-(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 01 अक्टूबर, 2004 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4

(44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी हैं) अध्याय-5 और 6 [धारा-76 की उप धारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी हैं] के उपबन्ध केरल राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्:—

“ जिला तथा तालुक तिरुवनन्तपुरम के राजस्व ग्राम कपकूटम-मीनकुलम के अधीन आने वाले क्षेत्र। ”

[सं० एस-38013/63/2003-एस. एस.-1]

के. सी. जैन, निदेशक

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 8th September, 2004

S.O. 2355.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st October, 2004 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI [except sub-section (i) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Kerala namely:—

“Revenue village of Kazhakottam —Meenamkulam in Thiruvananthapuram Taluk and District.”

[No. S-38013/63/2003-SS-1]

K. C. JAIN, Director

नई दिल्ली, 9 सितम्बर, 2004

का. आ. 2356.—गोदी कामगार, (सुरक्षा, स्वास्थ्य और कल्याण) अधिनियम, 1986 (1986 का 54) की धारा 9 तथा गोदी कामगार (सुरक्षा, स्वास्थ्य और कल्याण) नियमावली, 1990 के नियम 9 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार, श्रम और रोजगार मंत्रालय में भारत सरकार की अधिसूचना सा. आ. 89 (अ) दिनांक 21 जनवरी, 2002 में निम्नलिखित संशोधन करती है, अर्थात्:—

उक्त अधिसूचना में क्रम संख्या 7 और उससे संबंधित प्रविष्टियों के लिए निम्नलिखित प्रतिस्थापित किया जाएगा, अर्थात्:—

“7. उपाध्यक्ष, —सदस्य
मुंबई पोर्ट ट्रस्ट,
शूरजी वल्लभदास मार्ग,
बल्लार्ड एस्टेट,
मुंबई-400 038.”

[फा. सं. एस-17025/2/93-आईएसएच-II]

सी. ए. भास्करन, निदेशक

टिप्पणी : मुख्य आदेश भारत के राजपत्र, भाग-II, खण्ड-3, उप-खण्ड (ii) दिनांक 21-01-2002 में अधिसूचना संख्या सां. आ. संख्या 89 (अ) दिनांक 21-01-2002 के तहत प्रकाशित किया गया था।

New Delhi, the 9th September, 2004

S.O. 2356.—In exercise of the powers conferred by Section 9 of the Dock Workers (Safety, Health & Welfare) Act, 1986 (54 of 1986) and rule 9 of the Dock workers (Safety, Health and Welfare) Rules, 1990, the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Labour S. O. No. 89(E) dated 21st January, 2002, namely:—

In the said notification for serial number 7 and entries relating thereto, the following shall be substituted, namely:—

“7. Deputy Chairman, —Member
Mumbai Port Trust,
Shoorji Vallabhdas Marg,
Ballard Estate,
Mumbai-400 038.”

[F. No. S-17025/2/93-ISH-II]

C. A. BHASKARAN, Director

Note : The principal order was published vide Notification S. O. No. 89 (E) dated 21-01-2002 in the Gazette of India. Part-II, Section 3, Sub-Section (ii) dated 21-01-2002.